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SLAVERY IN NEW YORK: THE STATUS OF THE SLAVE UNDER THE ENGLISH COLONIAL GOVERNMENT

SLAVERY IN NEW YORK: THE STATUS OF THE SLAVE UNDER THE ENGLISH COLONIAL GOVERNMENT.

By EDWIN VERNON MORGAN, A.M., Harvard University.

The paper I have now the honor to read is a preliminary statement of the result of my work at Harvard University in connection with our Seminary of American History.[1] The programme names as my subject, "Slavery in New York." I must omit, however, any description of the Dutch period—begging you to notice merely that slavery became firmly established under the Dutch rule—and confine myself to the status of the slave under the English colonial government.

The "Duke's Laws," published in March, 1664, soon after the English conquered New Netherland, introduce us to our subject. They declared: "No Christian shall be kept in Bond-Slavery, except such who shall be judged thereto by Authority, or such as willingly have sold or shall sell themselves." Fearful that this provision might be misunderstood, the framers added hastily: "Nothing in this law shall be to the prejudice of Master or Dame, who have or shall by indenture take, Servants for a term of years or for life." In the amended laws, published about 1674, this provision

[1] The sources of my information have been, for the most part, the "Laws of New York," "Broadhead's Documents," and manuscripts furnished me by the courtesy of the officials of the State Library at Albany. I am indebted also to the civic histories by Messrs. Dunlap, Valentine, Furnam, Stiles, and Munsell, and to the laws and ordinances of New York, Brooklyn, and Albany for extracts from the corporation records of those cities. Various books, disclosed by the card catalogues of the Boston Public and of the Harvard Libraries, have also aided me.

appeared: "This law shall not set at liberty any Negro or Indian Slave, who shall have turned Christian after they had been bought by any person."

These declarations implied, but did not state, that inhabitants of New York could be born slaves. An act to encourage the baptism of negro, Indian, and mulatto slaves, passed October 24, 1706, established however the latter point. It provided that every negro, Indian, mulatto, and mustee should follow the state and condition of the mother and be adjudged a slave to all intents and purposes whatsoever. We find, therefore, that from the beginning of our period slavery might exist by reason of birth, voluntary sale, or by way of punishment for crime.

Slaves were classified from the color of their skins into negroes and Indians. Of these negroes were most numerous. Statistics prove that from 1698 to the Revolution they usually stood to freemen in the proportion of one to seven. Indians were classed, as a rule, with negroes. Nearly all the laws relating to slaves spoke of negroes, mulattoes, and Indians together. I shall consider in turn each of these classes, dwelling longest upon the negroes, and usually regarding negroes and Indians together, for the reason just mentioned.

Since the majority of slaves were either negroes or Indians, most servile laws related to them. Their civil position before the law can therefore be readily defined. By an act of November 27, 1702, masters were allowed to "punish their slaves for their crimes and offences at discretion not extending to life or member." Though no restrictions to this power appear, it probably extended only to minor offences. An order of the corporation of the city of New York gives us a suggestion of the manner in which masters used their rights. It declared in March, 1736, that the inhabitants of New York City had free license to send to the house of correction all servants and slaves, there to be kept at hard labor, and punished according to the direction of any one justice, with the consent of the master or mistress.[1]

[1] Dunlap, "Hist. New Netherland," 2: 165, app.

By the act of 1702, in a special class of criminal cases, the usual practice of English law was strangely set aside. "Where slaves are the property of Christians and cannot, without great loss to their masters or mistresses, be subjected in all cases criminal to the strict rules of the laws of England," a slave guilty of larceny of not more than £5 suffered corporal punishment at the discretion of any one justice of the peace; his master meantime making good the stolen property. As we might suppose, this was most distasteful to slave-holders. On April 10, 1710, Hermanse Fisher of Albany, declared that his negro, York, guilty of stealing sixpence, had been sentenced to be whipped round the city, at every corner receiving nine lashes on the bare back. This sentence had not been executed, yet the sheriff claimed from Fisher £13, 7*s.* for his slave's account.[1] More serious cases were punished in accordance with English law by death or by transportation.

In a case of murder, rape, or arson, the composition of the court for a slave's trial was peculiar. By an act of December 10, 1712, three justices and five of the principal free-holders of the county constituted judge and jury, seven making a quorum. The prosecution furnished the accusation, to which the offender was obliged to plead, apparently without the aid of council. How effectively an ignorant slave would conduct his defence one can imagine. In case of conviction the sentence was immediate death, "in such manner, and with such circumstances as the aggravation or enormity of the crime," in the judgment of the judges, required. For this unusual jury the jury of twelve might be substituted, provided the master so desired. In this case, however, he must pay the jury charges of nine shillings.

The evidence of a slave was not receivable in any case, civil or criminal, against a freeman. In cases of "plotting or confederacy among themselves, either to run away, or to kill or destroy their masters or mistresses," of arson, or the killing of their owner's cattle, the testimony of one against another was nevertheless admitted.

[1] N. Y. Colonial MSS., 54: 11.

Turning now from the civil disabilities suffered by the negro and Indian slave, let us examine the few civil privileges allowed him. Among these we count the fact that bail could be given by a master for his slave's appearance, and on so serious a charge as murder. On May 1, 1678, the Council, sitting at New York, ordered John Stratton to give security for the appearance at next Court of Sessions of his negro woman, who was charged with murdering her child.[1]

One case is recorded, if not more, where a slave brought suit against his master. June 25, 1710, Joris Elsworth, of New York City, complained to Governor Hunter, that his negro slave, Will, claiming to be a freedman, had brought suit against him for wages. The case was tried before a jury at a session of the Supreme Court of the province, and a verdict was given for the defendant. Elsworth failed, however, to get hold of Will, who was concealed by friends.[2] It is doubtful whether Will could have brought suit on any other plea than the one offered.

Though even freedmen were forbidden to "hold any houses, lands, or hereditaments," and all persons were forbidden "to trade with any slave, either in buying or selling, without leave of the master or mistress, on pain of forfeiting treble the value of the article traded for," the like restriction was not laid on their possession of other kinds of property. By the Game Law of Nov. 10, 1702, a slave received £3 for killing a wolf, and 30*s.* for killing a whelp, in Suffolk, Queens, and Kings counties, the bounty going apparently into his own pocket. On Sept. 5, 1717, Sam, late negro slave of George Norton, deceased, complained to the governor that Ebenezer Wilson detained money and a negro willed him by Norton. The following is a copy of the petition:

"George Norton in his life time by his last Will and Testament in Writing gave to your poor Petitioner his Freedom from Slavery and thirty pounds in Money, as also one Negro Man named Robin; But Mr. Ebenezer Willson, the Executor of George Norton Deceased, will neither pay your poor Petitioner

[1] N. Y. Col. MSS., 27: 86.
[2] *Ibid.*, 54: 21.

the Thirty Pound nor let him have said Negro Robin, although he has not (as your Excellency's Petitioner is inform'd) Inventary'd said Negro Robin as a part of said George Norton's Estate. And yet in the Winter when said Negro wants Cloaths he is forced to come to your poor Petitioner for a Supply. And so also when he is sick or lame he has come to your said Petitioner several Times and lain upon him for a month at a time. But so soon as he is well and able to work Mr. Willson takes him away and Imploys him in his own Service.

"Wherefore your Poor Petitioner humbly pray that your Excellency wou'd be favourably pleased to take his suffering Case into your Consideration and find out some way (as in your great Wisdom you shall see meet) to induce said Executor to do Right and Justice to your Poor Petitioner in the case set forth." [1]

Negroes and Indians were looked upon by our enlightened forefathers as children of the devil, and efforts were early made to Christianize them. The Dutch, however, do not appear to have been zealous in this work. Only in December, 1660, do we find among the instructions given by the home government to the Council for Foreign Plantations: "You are most especially to take an especial care of the propogacon of the Gospel in the Forraine Plantatons. . . . And you are to consider how each of the Natives, or such as are purchased by you from other parts to be Servants or Slaves, may be best invited to the Christian Faith, and be made capable of being baptized thereunto." [2] Upon the occupation of New Netherland by the English the work went on with greater spirit. The "Duke's Laws" required all constables and overseers to urge the inhabitants to inform their children and servants in matters of religion. The instructions of James II., William III., and Queen Anne, to the Royal Governors of New York, bade them, with the assistance of the Council, "to find out the best means to facilitate and encourage the conversion of Negroes and Indians to the Christian religion." Gov. Dougan reported this task difficult: "It is the endeavor of all persons here to bring up their children and servants in that opinion which themselves profess; but this I observe, that they take no care of the conversion of their Slaves." Twelve years

[1] N. Y. Col. MSS., 56: 172.

[2] N. Y. Col. Documents, 4: 36.

later, in 1699, it was still found impracticable. Gov. Bellemont wrote to the Lords of Trade: "A Bill for facilitating the conversion of Indians and Negroes (which the King's instructions require should be endeavored to be passed) would not go down with the Assembly; they having a notion that the negroes being converted to Christianity would emancipate them from their Slavery, and loose them from their services." [1]

On Oct. 24, 1706, "An Act to encourage the baptizing of Negro, Indian, and Mulatto Slaves" finally passed the Assembly, and later received the royal assent. It distinctly stated that the baptism of a slave should not set him free. The preamble and the first section read:

"Whereas divers of her Majesty's good Subjects, Inhabitants of this Colony, now are, and have been willing that such Negro, Indian and Mulatto Slaves, who belong to them, and desire the same, should be baptized, but are deterred and hindered thereof, by reason of a groundless opinion that hath spread itself in this Colony, that by the baptizing of such Negro, Indian or Mulatto Slaves, they would be free, and ought to be set at liberty. In order, therefore, to put an end to all such doubts and scruples as have, or hereafter at any time may arise, about the same; Be it enacted by the Governor, Council and Assembly, etc., that:—

"The Baptizing of any Negro, Indian or Mulatto Slave, shall not be any cause or reason for the setting them or any of them at Liberty." [2]

The act of 1706 soothed the fears of masters, and as the church registers attest, baptisms became frequent. The Rev. Elias Neau, under the patronage of the Society for the Propagation of the Gospel in Foreign Parts, had established a school for the religious instruction of slaves, three years before, in New York City. The slaves met on the evenings of "Wednesday and Friday and Sundays after church," on the upper floor of Mr. Neau's house. None of the churches could be used for a school-room, "because of keeping them clean for the congregations," and there was "no other public building convenient or capacious enuff." [3]

[1] N. Y. Col. Doc., 4: 510.

[2] Acts of Assembly, p. 81.

[3] Proposal for erecting a School, Library, and Chapel at New York, made by the Rev. John Sharp, Chaplain to the Forces in the Province of New York. (N. Y. Hist. Soc. Coll., 1880, p. 350.)

The Rev. John Sharp, seeing that the existing arrangements were inconvenient, proposed, therefore, in 1713, that a catachising chapel be erected, "which would give a favorable turn to the whole affair."[1] His plan seems to have been adopted.

From Mr. Sharp, also, we learn something in regard to the marriages of slaves. They were arranged, he tells us, by mutual consent, and consummated without the blessing of the church. Husband and wife often belonged to different families, and after marriage were sold many miles apart. Polygamy, therefore, was frequent. After baptism a few consented to break their "negro marriages" and "marry a Christian spouse." However highly colored these statements may be, it is certainly true that the marriage of a slave was not made legal before April 9, 1813. The law enacted on that day read: "All marriages contracted or to be contracted hereafter, wherein one or more of the parties were or may be slaves, shall be considered valid as though the parties thereto were free; the children of such a marriage to be deemed legitimate."

The burial of slaves was first made a subject for legislation on October 23, 1684. The text of the act is not accessible, and we are not able, therefore, to state its provisions. They probably forbade the private burial of slaves, for we find that Mees Hoogeboon, of Albany, was fined 12*s.* "for interring his slave in a private and suspicious manner."[2] In October, 1722, the corporation of New York ordered that all negro and Indian slaves, dying within the city, should be buried by daylight.[3] In 1731, in 1748, and in 1763, this order was re-issued, with the additional provision that not more than twelve slaves should attend any funeral, under penalty of public whipping. On these occasions no pall, gloves, or favors were to be used. A slave that held a pall, or wore gloves or favors, was to be publicly whipped, at the discretion of the mayor, or of one of the corporation, before

[1] *Ibid.*, 356.
[2] N. Y. Col. MSS., 32 : 71.
[3] Valentine's Manual, 1858, pp. 566, 571.

whom he had been convicted. These regulations were probably made to prevent the conspiracy of slaves as much as for any other purpose.

The main interest of the slave-code, indeed, turns on the regulations to prevent conspiracy and sedition. The fear of servile risings was constantly in the minds of our ancestors. Their savage legislation governing slave-life is only intelligible in the light of this fact. The corporation of New York passed an ordinance, as early as March 15, 1684, that "No Negro or Indian Slaves, above the number of four, shall meet together on the Lord's day, or at any other time, at any place, from their master's service." They were not to go armed, moreover, "with guns, swords, clubs, staves, or any other kind of weapon," on penalty of receiving ten lashes at the whipping-post. "An Act for the Regulation of Slaves," passed November 27, 1702, extended these regulations through the colony, but reduced the number allowed to meet from four to three. The desired end was not even then attained. Four years later Gov. Cornbury was obliged to order the Justices of the Peace of King's County to take proper methods for seizing and apprehending all such negroes as had assembled themselves in a riotous manner or had absconded from their masters. If any refused to submit, or could not be otherwise taken, they were to be "fired on, killed or destroyed."

In 1708, William Hallet, Jr., of Newtown, in Queen's County, with his wife and five children, were murdered by a negro and an Indian slave. The event reminded New Yorkers anew of the danger threatening them, and resulted in another act for preventing the conspiracy of slaves. The negro plot of 1712, the predecessor of the famous plot of 1741, necessitated yet another,—"An Act for Preventing, Suppressing and Punishing the Conspiracy and Insurrection of Negroes and other Slaves," passed December 10, 1712. It reiterated former provisions and emphasized special points. By the act of 1702, no person could employ, harbor, conceal, or entertain at his house, outhouse, or plantation, slaves other than his own without their master's consent.

By the latter act, any one who knew of their entertainment and did not report it, must pay £2 or be imprisoned. The master who did not prosecute the employer or host paid double the sum that the employer or host should have forfeited. On October 27, 1730, the Assembly passed "An Act for the more effectual preventing and punishing the Conspiracy and Insurrection of Negroes and other Slaves; for the better Regulating them, and for Repealing the Acts therein mentioned, relating thereto." This was the last and most comprehensive act relating to slaves passed in New York before the Revolution. It announced, however, no new principles, but contented itself with re-enacting former statutes.

Several city ordinances re-inforced the four acts which we have last examined. The corporation of New York, for instance, forbade any negro or Indian slave, above fourteen, to appear an hour after sunset in the streets "within the fortifications, or in any other place on the south side of the fresh water," without a lantern and lighted candle, "so as the light thereof may be plainly seen." Albany, a few years before, had forbidden any negro slave, unaccompanied by his master, or some one employed by him, on pain of death, to travel forty miles above the city. This ordinance was afterwards embodied in an act of assembly entitled "An Act to prevent the running away of Negro Slaves out of the City and County of Albany to the French at Canada," passed August 4, 1705.

Sunday was the slaves' holiday, and a favorite time for the hatching of plots. The Sunday laws, therefore, were intended to prevent conspiracies, quite as much as to enforce the fourth commandment. "Servile labouring and working," riding a horse through any street or on the common, and "rude and unlawful sports" were forbidden to negro and Indian slaves. Ferrymen were prohibited from carrying them, without their master's permission, from New York to Brooklyn. In New York City no negro or Indian slave could "fetch any water other than from the next well or pump to the place of his abode." Albany,

in a kindred regulation, added the provision, "in time of divine service or preaching."

Provisions in other city ordinances throw light on the slaves' daily conduct. Since they were in the habit, when riding their master's horses to water, to go prancing through the streets to the danger of passers-by, they were forbidden "to ride in a disorderly fashion." It was also against the law to clip household plate, to gamble with any sort of money, to assault or strike "any freeman or woman professing Christianity," to curse, swear, or "speak impudently to any Christian," or to drive any sort of cart without a permit from the mayor, except a brewer's dray. Negro and Indian slaves were forbidden, moreover, to sell oysters, boiled Indian corn, pears, peaches, apples, or other kinds of fruit.

Indian slavery is one of the most difficult phases of our subject that present themselves to the historian. Both the beginning and the end of its existence in New York are lost in obscurity; the most we can say is, that nearly all the laws enacted between 1664 and 1788 recognized the existence of Indian slavery and treated it as an integral portion of the slave system. With these facts in mind, in dealing with the civil and ecclesiastical status of slaves, and with the rules governing their conduct, I have considered Indians equally with negroes. I shall now attempt to treat them apart.

The first authoritative reference to the existence of Indian slavery in New Netherland appears in the complaints of eight citizens of New Amsterdam to the West India Company, dated October 28, 1644. They complain that "The captured Indians, who might have been of considerable use . . . as guides, have been given to the soldiers as presents, and allowed to go to Holland; the others have been sent off to the Bermudas as a present to the English governor."[1]

The next entry which has rewarded my search is of quite a different character, since it refers to the emancipation of Indian slaves. From it I draw the conclusion that how-

[1] N. Y. Col. Doc., 1: 210.

ever desirable Indian slavery appeared to the people of New York, it was not acceptable to the authorities. In April, 1680, the governor and council resolved, "that all Indyans here, have always been and are, free, and not Slaves . . . except such as have been formerly brought from the Bay or Foreign Parts. If any shall be brought hereafter into the government within the space of six months, they are to be disposed of as soon as may be out of the government. After the expiration of the said six months, all that shall be brought here from those parts and landed, to be as other free Indians."[1] This resolve, if put in force at all, appears ere long to have become a dead letter. In July, 1703, Jacobus Kierstead of New York, mariner, petitioned the governor in regard to an Indian brought by him from Jamaica and sold as a slave.[2] In the same month, twelve years later, Colonel Heathcote wrote home to Secretary Townsend: "The Indians complain that their children, who were many of them bound out for a limited time to be taught and instructed by the Christians, were, contrary to the intent of their agreement, transferred to other plantations and sold for slaves, and I don't know but there may be some truth in what they alledge."[3] As late as January 22, 1750, Colonel Johnson wrote to Governor Clinton: "I am very glad that your excellency has given orders to have the Indian children returned, who are kept by the traders as pauns or pledges as they call it, but rather stolen from them (as the parents came at the appointed time to redeem them, but they sent them away before-hand), and as they were children of our Friends and Allies, and if they are not returned next Spring it will confirm what the French told the Six Nations (viz.): that they looked upon them as our Slaves or Negroes."[4]

From the meager data which these extracts afford, and from the laws and ordinances previously cited, I am tempted to conclude: First, that, compared to the body

[1] Dunlap, 2: 129, app.
[2] N. Y. Col. MSS., 48: 1–2.
[3] N. Y. Col. Doc., 5: 433.
[4] *Ibid.*, 6: 546.

of negro and mulatto slaves, Indian slaves were few in number; and second, that the majority of Indian slaves were either captives or the descendants of captives taken in war, or else West Indians who were confounded with mulattoes and imported as such. That a considerable body of kidnapped red Indians existed as slaves in New York at any period I cannot believe.

In the first draft of this paper, I called the indented servants, or redemptionists, who were as numerous in New York as in the other plantations during colonial times, white slaves. I was led to give them this name because their condition appeared to me to have borne a much closer resemblance to that of slaves than to that of servants. A servant, as we see him, is a person whose "walk and conversation" is scarcely more hampered by laws and ordinances than that of the master whom he serves. A slave's action, on the other hand, is entirely controlled by his owner's will, reinforced by legal enactments. To call these bondmen servants rather than slaves, therefore, gives to modern ears a false idea of their condition. Upon further considering the subject, however, I am led to modify my opinion. A thorough search in the records assures me that negro, Indian, mulatto, and mustee slavery were the only kinds recognized by the laws of New York. The phrase "other slaves" sometimes appears, but it refers apparently rather to the different grades of half-breeds, which lax morality produced, than to white slaves. No single instance of a white man sold as a slave for life appears; whereas negro and Indian slaves were nearly always subject to life slavery. For these reasons I must conclude that bond-service, at least in New York, did not form an integral part of the slave system. Recognizing, however, how closely it was allied to that system, I cannot consider any treatise upon slavery complete which does not mention it.

Redemptionists or indented servants were, as a rule, either criminals reprieved from imprisonment at home to bond-service in America, or emigrants who served out the

price of their passage advanced by a shipmaster. In the first class falls the case of a Scotchman named Jamison, who, about 1700, "for burning the Bible, was sold a servant to New York, where he endeavored to propagate Atheism, and exchanged his living Scotch wife for a Dutch one." He became afterwards Deputy-Secretary, and was brought before the Assembly for wrongfully obtaining a certain tract of land.[1] In the second comes the case mentioned in the following extract:

"The West India Company should, above all things, consider it necessary to provide ways and means; we are of opinion that permission should be obtained from the Magistrates of some Provinces and Cities, to take from the alms-houses or orphan asylums, 300 or 400 boys and girls, of 10, 12 to 15 years of age, with their consent, however, and that their passage and board could be procured for fl. 50 or 60 per head. It must be further declared that said children shall not remain bound to their masters for a longer term than six or seven years, unless being girls they come, meanwhile, to marry, in which event they should have the option of living again with their masters or mistresses, or of remaining wholly at liberty and of settling in New Netherland."[2]

Also that of a French woman, Jean la Roux, who agreed to pay £8 for the passage of herself and four children from London to New York. If she could not procure the money in six weeks after her arrival, her children were to be at the shipmaster's command, "to be sold or disposed of at his pleasure."[3] Finally, I may mention Alice Fisher, who upon being seduced in England "transported herself" to New York, where she was sold for £5 to Edward Stevens for four years. In the August after her arrival a child was born. On completing her service she expected to receive her child, clothes, and bedding; but her master kept them all and refused Alice her discharge. To "right the case" Governor Dongan ordered Alice to pay Stevens £6 in a year. If she paid £2 in three weeks she might have her child and belongings.[4]

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[1] N. Y. Hist. Soc. Coll., 1880, p. 256.
[2] N. Y. Col. Doc., 1: 364.
[3] Dunlap, 2: appendix.
[4] N. Y. Col. MSS., 31: 148.

In a newspaper[1] of May 7, 1728, appeared this advertisement: "The ship 'Happy Return' is lately arrived at the city of New York, from Dublin, with men and women servants. Many of the men are tradesmen,—as blacksmiths, carpenters, weavers, taylors, cordwainers, and other trades; which servants are to be seen on board said vessel, lying over against Mr. Read's wharfe, and to be disposed of on reasonable terms." Another cargo of the same kind was to be sold by Mr. John Dunks; wheat and flour taken in payment.[2]

Criminals were sold also from New York to the West Indies. In 1669, Governor Lovelace ordered Marcus Jacobson, called the "Long Finn," accused of assuming the name of a Swede and of opposing the legal government in Delaware Bay, to be sold a servant to Barbadoes. He had been tried by a special commission and sentenced to death, but this sentence was *softened* to whipping, branding, imprisonment, transportation, and slavery.[3]

From this sketch I have omitted much interesting matter, bearing on the slave-trade, on the fugitive slave-laws, and on kindred topics. I have accomplished my purpose, however, if I have unearthed a few facts concerning the status of the slave in New York during the English colonial period.

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[1] N. Y. *Gazette.*

[2] *Ibid.*

[3] Dunlap, 2: 117, app.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

By Dr. Herman V. Ames, Harvard University.

The Constitution of the United States provides for its own amendment, whenever two thirds of both Houses of Congress, or a convention called upon the application of two thirds of the State legislatures, shall propose amendments, which in either case shall be valid when ratified by the legislatures of, or conventions in, three fourths of the several States, as Congress may direct.

It is difficult to avoid the conclusion that it was the expectation of the members of the Federal Convention that a frequent use of the amending power would be made. The experience of the government under the articles of Confederation had produced the conviction that there was need of a system of amendment by which the Constitution could be made to conform to the requirements of future times. The framers doubtless thought that the plan adopted would secure the desired end, whenever the popular will would justify a change. Their expectation seemed to be realized by the subsequent treatment of the Constitution in the State conventions, and by its early amendment.

In making provision for a federal convention the framers of the Constitution doubtless had in mind the possibility of a future fundamental revision, and in addition wished to provide, when necessary, for a body having a direct mandate from the people to propose amendments. The fact that nearly two hundred constitutional conventions have been called to frame or revise the State constitutions renders it

all the more remarkable that this method of proposing amendments to the United States Constitution has never been put in operation. This may be accounted for in part by the fact that there has never been a time when a general revision of the Constitution has been widely desired. Although conventions for the proposal or ratification of amendments have never been assembled, yet occasions have occurred when their trial has been urged. Passing over the propositions for a second convention, which were made in the Federal Convention itself, and in the States at the time of their ratification of the Constitution, we find that the government had scarcely been established when Virginia and New York made application for a convention to draft amendments. In 1833 the legislature of Georgia petitioned Congress to call a convention to consider the proposal of amendments. Again, in the sessions of Congress just previous to the Rebellion, when there was a general desire that every means should be tried before resorting to a civil war, petitions from the legislatures of five States, besides eight propositions from members of Congress, were received, calling for a drafting convention. On the invitation of Virginia, commissioners from seventeen States assembled in a peace convention at Washington. The convention, as a result of its work, recommended to Congress a series of amendments to the Constitution.

Propositions for a convention were also offered in 1861, 1862, and again in 1866. Senator Ingalls, in 1876, in consequence of the disputed election, introduced a resolution making full provision for a convention to revise and amend the Constitution; and as recently as 1884 an attempt was made to create a commission to call a convention.

In like manner, notable attempts have been made to have conventions held within the States to ratify amendments proposed by Congress. Especially was this so in the case of the thirteenth and fifteenth amendments.

The other method of proposal by Congress and ratification by the State legislatures has been adopted in the case of all the amendments which now form a part of the Con-

stitution.[1] The preference for this form is doubtless due to its manifest advantage, inasmuch as the bodies called upon to act are always in existence and can be quickly assembled.

With this introduction I pass to a consideration of the subject proper of this paper, namely, the amendments proposed to the Constitution. Out of the mass of material in the records of Congress I have selected only those actually brought to the official notice of Congress, either by its members, the State legislatures, or the Presidents. It is my purpose here to treat these by periods, aiming to give the general characteristics of each period, it being impossible, in the allotted time, to speak of particular amendments, except by way of illustration.

Upward of thirteen hundred resolutions, containing over seventeen hundred propositions to amend the Constitution, have been offered in the National Legislature down to the close of the Fiftieth Congress, in March, 1889. These naturally fall into four distinct periods: the first period, embracing the years 1789–1803, and aiming at the perfection of details; the second period, including the years 1803–1860, and covering general alterations; the third period, comprising the years 1860–1870, and relating to slavery and reconstruction; and the fourth period, extending from 1870 to 1889, and proposing general emendations.

First Period, 1789–1803.—This period, which covers the early years of our history, is characterized by the passage of the first ten amendments, known as the Bill of Rights, in response to the spirit of dissatisfaction expressed by the series of one hundred and twenty-four amendments proposed by seven of the States at the time of their ratification of the Constitution, and the general demand of the country for further limitations upon the powers of the federal government.

The period is further marked by a number of amendments intended to correct minor defects which had become appar-

[1] Attempts were made to have the XIV. and the XV. amendments submitted to the State legislatures, chosen next after the submission of the amendments.

ent in the working of the Constitution. The provisions of some of these became crystallized in the eleventh and twelfth amendments.

Of the one hundred amendments which have been suggested affecting the status of the judiciary, only one has been discovered which would nullify the provisions of the eleventh amendment. Although the twelfth amendment remedied the fault discovered in the electoral system, yet the system itself has given rise to more dissatisfaction than any other feature of our Constitution, as is shown by the fact that more amendments have been proposed on this subject than upon any other.

Second Period, 1804–1860.—In this period, extending over a longer term of years than the other three together, were introduced upward of four hundred amendments, covering a wide field of subjects. Propositions contemplating changes in the election, term, removal, compensation, and duties of members of the legislative, executive, and judiciary departments were the most numerous.

This being the period of conflict between the broad and strict constructionists, it is characterized by many attempts to confirm or prohibit, by amendment, practices established by custom. Of this nature were the amendments granting appropriations for internal improvements, and prohibiting or authorizing the establishment of a national bank, introduced periodically during the years 1813 to 1832, as the congressional discussion or presidential message or veto suggested. A closer examination of the scattered propositions shows that they are indices of the political struggles of the time; thus it is evident that the trial of Judge Chase suggested the several propositions introduced during the years 1805 to 1809 in regard to the term and removal of judges. The resolutions proposing the apportionment of representatives and direct taxes to the free inhabitants, and prohibiting the importation of slaves, introduced previous to 1808, were called out by the approach of that year when the agreement prohibiting amendments on these questions would terminate. As a result of the War of

1812, the members from Connecticut and Massachusetts, acting upon the instruction of their respective State legislatures, introduced a set of interesting amendments, the work of the Hartford Convention. In 1833 Georgia offered a petition for the call of a convention to consider a series of thirteen amendments, the greater number of which were doubtless suggested by the recent nullification by South Carolina, and her own contest with the federal judiciary, arising out of the Indian land question. President Jackson's numerous vetoes—those of the national bank and internal improvement bills being especially obnoxious—gave rise to resolutions providing that a bill might be passed over the veto by a majority vote. The presence of a surplus caused Mr. Calhoun in 1835 and again in 1836 to present a proposition providing for its distribution among the States. The crisis of 1837 led to the introduction of amendments prohibiting the issue of State bank notes. President Tyler's erratic course led to another flood of resolutions proposing amendments restricting the eligibility of the President to a single term, and enabling bills to be passed over the veto by a majority vote, as well as to amendments preventing a pocket veto.

The proofs are many of a widespread dissatisfaction on the part of the country, with both the existing method of electing the President and the length of the presidential term. At five different times between the years 1802 and 1822 was an amendment proposing that the electors should be chosen by districts, passed by one House of Congress. During this period forty-four amendments of a somewhat similar character were offered in Congress. The failure of the electors in 1824 to choose a President, and the subsequent defeat of Jackson by the House of Representatives, gave rise to a very large number of propositions upon the choice of the executive; so many, in fact, that one gentleman introduced a resolution that amendments should only be proposed *decennially*. Some of these stipulate that in no case shall the election devolve upon the House of Representatives; and others, prompted by the alleged bargain

between Clay and Adams, provide that in case the election should fall to the House, no member of Congress should be eligible to the Cabinet. Various plans for the election of President without the intervention of electors were suggested. Some of these proposed a direct vote by the States, more by districts, and twenty-two declared for a popular vote. Among so large a number of propositions there were naturally some of a novel character. The most striking of these were two suggesting the choice of President by lot. The first, introduced by Senator Hillhouse of Connecticut, in 1808, provided that the Senators should hold office for three years, and one third retire annually; from the retiring Senators one should be chosen by lot as President for the ensuing year. The other, brought forward by Mr. Vinton of Ohio in 1844, and again in 1846, arranged that each State should by popular vote elect from its citizens a candidate for the Presidency; from these candidates one was to be chosen by lot. The amusing details of this suggestion were, that as many balls as there are Senators and Representatives from each State, inscribed with the name of the State, shall be placed in a box. One ball shall be drawn from the box, and the candidate elected by the State, the name of which is upon the ball drawn out, shall be President.

Various amendments were presented, limiting the President to one, or at most two terms. An amendment making the President ineligible for a third term received the sanction of the Senate in 1824, and again in 1826. During this period there were fourteen amendments proposed, diminishing the veto power and two dispensing with it.

Amendments dealing with the relations of the federal government and individuals were few in number, so completely had the first ten amendments covered the field, that nearly all dissatisfaction had been allayed. One of the few introduced, providing that any one who should accept a title of nobility, or, without the consent of Congress, a present, office, or emolument from any foreign sovereign or state, should cease to be a citizen of the United States, and incapable of

holding office therein, passed both Houses of Congress in 1810, and received the sanction of twelve States, failing of ratification by one vote only.

The majority of the remaining propositions of this class aimed at the protection or abolition of slavery. As early as 1818 Mr. Livermore of New Hampshire introduced a resolution prohibiting slavery, which failed to receive the consideration of the House. Again in 1839 John Quincy Adams tried to introduce a series of amendments abolishing hereditary slavery after 1842, forbidding the admission of slave States after 1845, and prohibiting slavery and the slave trade at the seat of government. Shortly after the compromise of 1850 an unsuccessful attempt was made to protect still further the interest of the slavocracy by the introduction of an amendment providing that no amendment shall be made abolishing or affecting slavery in any State without the concurrence of the slave States.

The most remarkable fact of the period is that not one of the four hundred amendments proposed during these fifty-eight years became a part of the Constitution. Six passed the Senate; in addition one only received the sanction of both branches of Congress.

Third Period, 1860–1870.—Toward the close of the second period there was a lull; during two sessions of Congress no amendments were introduced, but at last an avalanche of propositions, which were prompted by the hope of preserving the Union, fell upon the second session of the thirty-sixth Congress (1860–61), nearly all dealing with some phase of the slavery question. Some of these suggested very radical changes in the form of government, notably one proposing that the Presidency be abolished, and an executive council of three be established, each armed with the veto; and another that either a dual executive be created, or a division of the Senate into two bodies should be effected.

Several States had already passed the ordinance of secession before any thing had been done; finally, upon the 2d of March, 1861, the so-called Corwin amendment prohibiting any amendment abolishing or interfering within any

States with the institution of slavery passed Congress. There was no chance for its ratification. The time for compromise had passed, and the question was transferred from legislative halls to the field of battle. For some months after this Congress was so occupied with the consideration of war measures that the amending power was scarcely invoked, but from 1864 on, the question of amendment became of first importance. The political and social changes brought about by the war presented a new set of questions, so that the amendments relating to the legal status of individuals, which previously had been of the least, now became of the greatest, importance.

From the large number of resolutions proposed during the reconstruction period, nearly all dealing with questions arising out of the rebellion, the thirteenth, fourteenth, and fifteenth amendments were ratified, registering the results of the war. In this period the question of amendment received the most serious attention of Congress, hence it was the most productive in results. Besides the three now a part of the Constitution and the Corwin amendment, four amendments passed one house but not the other.

Fourth Period, 1870–1889.—The last of the reconstruction amendments was ratified in 1870. The twenty years which have since elapsed form a period characterized by attempts to alter the Constitution in almost every particular. While in this respect not unlike the tentative efforts of the second period, the amendments considered in the fourth more generally contemplated substantial alterations than confirmatory enactment. About four hundred propositions have been introduced during this time; two classes command attention, the one and the larger involving changes in the form of government, the other in its powers. Under the former the choice, term, composition, and duties of the legislative, executive, and judiciary are considered, there being some one hundred propositions on the term and election of President alone. One of these—proposed by Mr. Marsh of Pennsylvania in 1877 and again in 1888—is worthy of mention. It provided for a direct vote by States,

but the electoral vote should be distributed among the candidates in the proportion the electoral ratio shall bear to the popular vote of each candidate.

One noticeable feature is the increase in the number of amendments calling for the popular election of the President, senators, and even such executive officers as postmasters and revenue collectors. The desire to reduce the number of members in the House of Representatives has led to the introduction since 1881 of four amendments to accomplish this result, the last of these placed the number at two hundred and fifty.

Two amendments have passed the Senate, the first in 1886, the second in 1887, changing the date of Inauguration Day to April 30, but both failed in the House.

The second class, comprising amendments to the powers of the government, cover a large variety of subjects. Many of these indicate a strong drift toward paternalism. Some are attempts to limit the powers of Congress, others are intended still further to protect the civil and political rights of the individual, while others aim at the correction of abuses, both of a social and political nature. A good example of this last group is the amendment introduced by Mr. Blaine, prohibiting the distribution of money to religious sects, which passed the House August 4, 1876, but received no further indorsement.

During this period but few amendments received even brief consideration, and only four out of the entire number received the approval of the House.

In summarizing the results of our examination of the four periods we find: Of the seventeen hundred propositions to amend the Constitution, over one half have received no further consideration beyond their reception or reference to a committee. The remainder have either been reported or received further discussion, but only a very small percentage of these have been brought to vote.

Besides the fifteen amendments now a part of the Constitution, only four have been proposed by Congress to the States for ratification. In addition nine have passed the

Senate, and nine the House of Representatives. The prospect of almost certain failure does not seem to have diminished the number of amendments offered. In the Fiftieth Congress there were forty-eight resolutions proposing amendments on twenty different subjects, and but two of these were brought to vote.

In view of these facts it is somewhat surprising that there has not been more effort to change the method of amendment. The first proposal of this character was made by the convention in Rhode Island at the time it ratified the Constitution, May 29, 1790, and was intended to make it more difficult to secure an amendment. This stipulated that after the year 1793 no amendment should be made "without the consent of eleven of the States heretofore united under the Confederation."

On the other hand one proposition has been made looking to a reduction in the number of ratifications required. Early in the year 1864 Senator Henderson of Missouri introduced in connection with the resolution for the abolition of slavery, which subsequently as amended became the Thirteenth Amendment, an article proposing a reduction of the majorities required for the proposal and ratification of amendments. A simple majority was to take the place of the two-thirds vote required to recommend an amendment, and instead of three fourths, two thirds of the legislatures of, or conventions in, the States should be sufficient for ratification. This resolution was never reported from the Committee.

In the session of 1860–61 there were five proposals to take the sense of the people on certain amendments; this would have been, so to speak, a plebiscite on the question, and simply made known to Congress the temper of the people at large. Another form of the same desire to consult the people is seen in a proposition made by Mr. Davis of Kentucky in 1869 as an amendment to the Fifteenth Amendment, which was then under consideration, that this and all future amendments shall be submitted to the vote of the people of each State; a majority of the people entitled

to vote in three fourths of the several States shall be necessary for its ratification. As it would plainly be unconstitutional to apply this method of ratification to the Fifteenth Amendment before Article V. of the Constitution had been changed, this resolution failed to receive any support.

In the light of the history of the different movements to secure amendments during the past century, we cannot believe that the expectation of the framers of the Constitution has been fulfilled. Nothing of strength has been added to the Constitution by amendment, except in the case of the reconstruction amendments, and these were carried only after a civil war. Certainly the facts plainly show that the method is not sufficiently facile to meet our wants. The cause of the difficulty is, to use the words of Chief-Justice Marshall, that "the machinery of procuring an amendment is unwieldy and cumbrous." The majorities required are too large.

But the importance of the proposed amendments does not lie in their influence on the actual changes of the Constitution merely; they are indices of the movement to effect a change, and to a large degree show the waves of popular feeling. It is not to be supposed that the lack of amendment has prevented the popular desire from making itself felt; on the contrary, it has secured those unwritten amendments which are as effective as those contained in the organic law.[1]

[1] The material upon which this paper is based has been discussed at length in a thesis accepted for a Doctor's degree at Harvard University, 1891.

CONGRESSIONAL DEMANDS UPON THE EXECUTIVE FOR INFORMATION

CONGRESSIONAL DEMANDS UPON THE EXECUTIVE FOR INFORMATION.

By EDWARD CAMPBELL MASON.

Can the President of the United States, or his subordinates in the Executive Department, be compelled to transmit papers or give information to Congress?

Apparently we have here two questions: one as to Congressional demands for information with papers, and another as to Congressional demands for information without papers.

Really, however, the questions are the same in their nature, in their historical development, and in regard to the principles which govern them.

It is in short the question as to whether the National Legislature can compel the National Executive to disclose facts in its possession.

Congress is constantly demanding such testimony, and while in the great majority of instances, notably in the case of the impeachment of President Johnson, the demand is complied with; still there are a number of well defined cases in which the Executive Department, by the authority of its chief, has refused to answer the questions or supply the papers.

In the present paper the attempt will be made to settle two questions. First, are these Congressional demands reasonable; and secondly, has Congress the power to enforce its demands? Let us begin with the cases in which information has been refused.

The first of these is the famous one in Washington's administration, when the President refused to transmit to the House of Representatives a copy of the instructions

given to the United States minister, who negotiated the Jay treaty.[1] The refusal had the unanimous assent of the Cabinet,[2] and was based, first, on the unfavorable effect such a disclosure would have on future negotiations with foreign nations. And secondly, on the fact that it did not appear that the inspection of the papers called for could be relative to any purpose under cognizance of the House of Representatives.[3] The President implied that had they called for the papers for the purposes of impeachment, he might have complied.[4]

In the House Mr. Madison admitted the right of the Executive to refuse to send papers to Congress whenever the state of business in his department, or the contents of the papers required it. But he emphatically denied the right of the President to step outside the limits of his branch of the Government, and refuse papers because they could serve no legislative purpose. This latter question he maintained was for the Legislature alone to determine.[5]

A second case occurred in 1833, when the Senate requested the President to transmit to it a copy of a paper which had been published, and which purported to have been read in the Cabinet.[6] In the debate on the passage of the resolution, Mr. Benton said that the call was unjustified. A paper could be made use of in only two ways: Either as an aid in legislation, or for the purpose of impeachment. The paper called for in this instance could not be used in the first way, and was confessedly not to be used in the second way. Therefore the request was improper.[7] President Jackson refused to comply, on the ground that the paper was a private communication, and the Senate had no more right to call for it than they would have had to demand information in regard to a private conversation between himself and the heads of the department.[8]

[1] House Journal, vol. ii., p. 466.
[2] Schouler's "History of the United States," vol. i., p. 309-310.
[3] House Journal, vol. 2, p. 487. [4] *Ibid.*
[5] "Annals of Congress," 4th Cong., 1st Series, p. 773.
[6] Senate Journal, 1st sess., 23d Cong., p. 40.
[7] Benton's "Thirty Years in the United States Senate," vol. i., p. 399.
[8] Senate Journal, 1st sess., 23d Cong., p. 42.

In 1842 President Tyler refused to send to the House the names of the members of the Twenty-sixth and Twenty-seventh Congresses, who had applied to him for office.[1] It seems likely that the information sought was to be used in an attempt which was being made at that time to amend the Constitution, so that the appointment of members of Congress to offices under the United States Government, might be prevented during and immediately after their terms as Congressmen.[2] The inquiry was thus germane to legislation undertaken by Congress. The President refused the request, however, on the ground that the House had nothing to do with his power of appointment.

The fourth case occurred in 1842. In that year the House of Representatives called on the Secretary of War for the reports made to his department by a United States commissioner, who had recently investigated certain alleged frauds on the Cherokee Indians.[3] The request was made in aid of an independent investigation, undertaken by the House. The Secretary refused to comply, on the ground that the publication of the papers would be detrimental to the public interests, and to the rights of certain individuals.

The refusal gave rise to a sharp debate. John Quincy Adams maintained the right and power of the House,—under its authority to draw up articles of impeachment,—to call for any and all papers in the Executive Department. If the House did not have the power to reach such papers, the power of impeachment—so Mr. Adams argued—would be valueless.[4]

Mr. Adams's colleague, Caleb Cushing, on the other hand upheld the power of refusal, and based it on the fact that Congress and the Executive were co-ordinate branches of the Government; neither one of which was subject to the control of the other. Congress could demand if it chose, but the President had a power of refusal co-extensive with the legislative inquiries.

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[1] House Journal, 2d sess., 27th Cong., p. 421; Senate Miscellaneous Docs., 2d sess., 49th Cong., No. 53, p. 167.

[2] *Congressional Globe*, 2d sess., 27th Cong., pp. 350–973.

[3] House Journal, 2d sess., 27th Cong., pp. 831–832.

[4] *Congressional Globe*, 2d sess., 27th Cong.

The Secretary's refusal was referred to the Committee on Indian Affairs, who reported a series of resolutions affirming the power of the House to call for all papers relating to matters within its legislative sphere; declaring that the present matter was within that sphere, and calling on the President to forward the desired papers.[1]

The papers were finally sent to Congress because the reasons for keeping them secret no longer existed. The President, however, justified the Secretary of War for his refusal, on the ground that the President, through his agents, could refuse to send papers to Congress, whenever in his discretion public interest would be sacrificed or private confidence violated by a compliance.[2]

The Committee on Indian Affairs made a long report on this message in which they reaffirmed the power of the House and based their argument, as did Mr. Adams, on the power of impeachment, or, as they put it, on the constitutional right of the House of Representatives to a full and free inquiry into the conduct of the administration.[3] The report further says that the House, not the President, is the proper judge as to whether or not secrecy is required; that if in the opinion of the House it is necessary, it will be scrupulously maintained.

In 1846 the Executive for the fifth time refused to comply with a request for information. The call was for an account of the expenditures by the State Department, from the secret fund for foreign negotiations, from March 4, 1841, to the retirement of Daniel Webster from the State Department.[4] These expenditures had been made, as the law allowed, upon the President's receipts or certificates without vouchers.

The request was refused on the ground that the only explanation of the expenditures which could be said to belong to the Government was the certificates of the President. It

[1] House Journal, 2d sess., 27th Cong., pp. 1183, 1286, 1290.
[2] House Journal, 3d sess., 27th Cong., p. 465.
[3] House Reports, 3d sess., 27th Cong., vol. iii., No. 271.
[4] House Journal, 1st sess., 29th Cong., p. 649.

was admitted that on the confidential files of the State Department were to be found detailed accounts of the uses to which the money in question had been put. These were, however, in the nature of private communications from one President to his successor, which the successor would not be justified in disclosing.

In 1885 occurred the sixth and last of these refusals on the part of the Executive to furnish papers or information. In July of that year, during the recess of the Senate, President Cleveland removed G. M. Duskin, United States Attorney for an Alabama district. J. D. Burnett was designated to fill the vacancy. In January 1886 the question of Burnett's confirmation came up in the Senate, and that body called on the Attorney-General for all the papers in the Department of Justice relative to Duskin's removal.[1]

The Attorney-General, on the President's direction, refused to comply with the request on the ground that the Senate had no power to review or revise the President's removal of Federal officials during the recess of the Senate. Furthermore, he declared that the papers in question, although filed in the Department of Justice, were private and thus not subject to the call of the Senate in any case.[2]

The Senate, in reply, claimed that the papers were necessary in order to determine whether or not there was a vacancy to be filled, and therefore should be transmitted. This argument of course implies that papers should be furnished whenever they were relative to a matter over which Congress had cognizance.

We have now examined the cases. The next questions are: What are the principles upon which the refusals are based; and are those principles sound?

In the first place are the Congressional demands reasonable? It is to be noted at the outset that the vast majority of demands are admitted by all to be reasonable, and are complied with by the Executive. But in the instances we are considering this admission has not been made. Were

[1] *Congressional Record*, 1st sess., 49th Cong., p. 1585.

[2] *Ibid.*, p. 1902.

these demands reasonable, or was the President justified in refusing? On the one hand it was said, first: that if Congress is to pass laws it should have the right to obtain the information necessary to prevent it from making mistakes; it cannot be expected to legislate in the dark. Again it was urged with great earnestness, that unless the right to impeach was to be greatly hampered and in many cases even destroyed, Congress must have the right to call on the Executive for information, since oftentimes many of the facts upon which the impeachment would depend must be in the possession of the different departments.

On the other hand it has been argued that the President ought to refuse Congressional demands for information whenever the public interests would in his opinion be injured by a compliance. Furthermore it is said that private communications cannot be called for. The very fact that they are private puts them out of the reach of Congressional investigation.

It is difficult to see why the mere fact that the Executive considers the information private, should weigh against the right of Congress to call for it. But the fact that the public interests would be injured by a compliance with the Congressional request, is a substantial reason for an Executive refusal. It is clear, moreover, that the determination of the existence and weight of this latter reason must be left to the discretion of the Executive. A reference of the matter to Congress or to a judicial tribunal for a hearing would, in many cases where the reason was valid, cause the very injury which ought to be guarded against—namely, the disclosure of government matters which it is important, for one reason or another, to keep secret.

As a question of principle, then, Congress has a right to call for information from the Executive. But this right must be exercised with a due regard for the public interests involved in the questions.

We must now turn from the question of principle and inquire whether Congress can enforce its demands for information. The instances we have examined do not disclose

any power sufficient for this purpose. The House, it is true, laid claim to the necessary power by virtue of its authority in impeachments. The power claimed was never exercised, however, or even clearly defined. The House, when drawing articles of impeachment, acts merely as an accuser,[1] and it can hardly be assumed that this function gives it any authority to obtain information, which it does not already possess as a legislative body.

It may be said, however, that the Senate can compel the Executive to furnish information, on account of its judicial function in impeachments. It is true that this body sits as as a court while the House does not; and like all courts it has the power to subpœna witnesses.[2] But where does it get the power which—as we shall shortly see—a court does not have, of compelling an executive officer to disclose matters which, in his opinion, should be kept secret? This power, if it exists, must be derived from the Constitution, but nothing in that instrument, expressly or by implication, affirms the power.

The result of this reasoning is, that the right to compel the Executive to give information to Congress is not supported by the power of impeachment. If it exists, then, it must rest on the power of Congress to investigate the matter upon which it has a right to legislate. This power undoubtedly exists, and in 1857 a statute was passed, giving either branch of Congress the right to summon witnesses, and providing for the punishment of those persons who refused to obey the summons.[3] But is not the Executive outside the operation of this power? This question would be much the same, either before or after the statute, and for the sake of brevity it will be discussed as if raised since 1857. Assuming for the moment, that the statute, in so far as it is applicable, could be enforced against the President, it seems to be true, nevertheless, that it does

[1] Rawle on the Constitution, chapter xxii., pp. 210, 212.

[2] "Trial of the President" (Johnson), p. 63; Papers of the American Historical Association, 1890, p. 164.

[3] U. S. Rev. Stats., 1878, §§ 102, 103, 104.

not apply to Congressional calls for Executive papers or information. It is well settled law in England,[1] in many if not all of the United States,[2] and in the United States courts themselves,[3] that an executive officer (including a President or Governor, and his Cabinet officers) are not bound, at the call of a court, to produce papers, or disclose information committed to them, when in their own judgment the disclosures would be inexpedient on public grounds. The conclusion is strong that the same privilege would apply to the power of Congress we are considering. This conclusion is strengthened by the fact that the statute provides that no witness shall be privileged not to testify, because his testimony, or the papers called for, would disgrace the witness or render him infamous. No other privilege is referred to. The privilege denied in the statute is one which, on good authority, is denied to witnesses generally, without statute. If, then, Congress prohibits one of the smallest and least common of the privileges of witnesses, does it not *by that very fact* impliedly indorse the remaining privileges recognized by the courts?

If my reasoning is sound, Congress derives no power from its legislative authority, to compel the President or the officers under him in the Executive Department, to furnish papers or to testify.

This completes the examination of the arguments advanced in behalf of the power of Congress to compel the Executive to comply with its demands. But there is still another reason, lying behind those already given, for the Executive right of refusal—one which, should all others fail, would be sufficient to prevent Congress from compelling the Executive to furnish information. It is a reason which has already been hinted at, and which in any struggle over the question would be likely to show itself first. The three departments of our Government are supreme and

[1] 5 H. & N., 838.

[2] 85 Pa. St., 433; 11 Johns., 158; 22 N. J. Eq., 111; 109 Mass., 487.

[3] 92 U. S., 105; 2 Burr's Trial, 538 (published by Hopkins & Earle, Phila., 1808).

independent. It is therefore well-nigh impossible for Congress to coerce the Executive except by a resort to arms. To be sure the President may be impeached for high crimes and misdemeanors, but even this would not bring out the desired information unless the Executive chose to give it. Furthermore, it is very difficult to imagine an impeachment based on a refusal to furnish information. Such a refusal is neither a crime nor a misdemeanor, even under the interpretation given to those terms by Congress in President Johnson's trial.

It appears, then, that although there should be cogent reasons for a compliance with the Congressional demand for information, yet compliance would be a matter wholly within the Executive discretion. It is certainly reasonable to refuse whenever public interests or even the rights of individuals require it. But in every case, whether or not a reason exists, it is clear that the peculiar structure of our Government, gives the Executive the absolute power to refuse as long as the struggle is carried on under the Constitution. Whatever may be the advantages of this co-ordination of forces, it certainly brings about an unfortunate clashing of authority. It indicates an amount of friction in the governmental machinery which, even if unavoidable, is certainly undesirable.

A PLEA FOR REFORM IN THE STUDY OF ENGLISH MUNICIPAL HISTORY

A PLEA FOR REFORM IN THE STUDY OF ENGLISH MUNICIPAL HISTORY.

By Dr. Charles Gross, Harvard University.

No country of Europe has a soil more congenial to the study of history than England. The genesis of her present institutions, their foundation in the remote past, the unbroken continuity of their development, the interest that the present awakens in the past and the past in the present, the urgent necessity of carefully studying the past to know and improve the present,—all should form a strong incentive in England to the study of history. Moreover, owing in great part to this very continuity of development, England has a collection of public records unequalled in richness by those of any other country of Europe. Thousands of well-preserved parchment rolls, easily accessible and full of valuable material, invite investigation. Nevertheless, England remains far behind some of her neighbors in the study of the past. This is particularly true of mediæval English history, many important branches of which have not yet been comprehensively and critically investigated. Very little has been accomplished in the mediæval history of such great subjects as law, commerce, the church, and municipalities. It is with the last-mentioned theme that this paper has to deal. I wish to point out just what has been accomplished by historians of English towns, and what remains to be accomplished. Some of my general strictures on this field of study will also apply to other branches of English history.

The modern literature of the subject, as distinguished from original sources, falls under two distinct heads: (1) general histories of boroughs; (2) histories of particular boroughs.

Among general histories the oldest is "An Historical Treatise of Cities and Boroughs," by Robert Brady, Regius Professor of Caius College, Cambridge, and Keeper of the Records in the Tower (London, 1690). He was also the household physician of Charles II. and James II., and a member of Parliament in 1681 and 1685. His treatise on municipal history has had a greater influence than any other in moulding public opinion and in diffusing erroneous views concerning the development of towns.

The main propositions that he advances are the following: that, according to Domesday Book, burgesses were "ordinary" and "common" tradesmen in a servile or semi-servile condition; that the governing community of the borough (the *communitas burgi*) always consisted of a select number of these tradesmen, namely, the mayor, aldermen, and common council, the burgesses at large having no voice in the government of the town; that boroughs were not summoned to Parliament until the year 23 Edward I.; that at first only towns of the royal demesne were thus represented; that this and all other municipal liberties emanated from the crown, boroughs having had their origin in royal charters; and, finally, that the electors of a borough's representatives in Parliament were always the select few who constituted the "community," or governing body of the town.

Most of these deductions are untenable. Trade was only a subsidiary occupation in many of the boroughs; in most of them agriculture was a prominent, often the predominant, element until late in the Middle Ages.[1] Hardy, the novelist, in his "Mayor of Casterbridge" gives one a more truthful picture of a mediæval borough than Brady in his learned treatise. Moreover, the constitution of the English town in the eleventh, twelfth, and thirteenth centuries was democratic; the civic community was not a narrow aristocratic body, as Brady contends; most of the inhabitants had a voice in municipal affairs.[2] The drift from a democratic to

[1] Gross, "Gild Merchant," i., pp. 3, 4.

[2] Colby, "Growth of Oligarchy in English Towns," *English Hist. Review*, October, 1890.

an aristocratic polity did not begin to be clearly perceptible until the fourteenth century.[1] Brady also errs in asserting that towns summoned to Parliament were exclusively those of the royal demesne.[2]

To any one who probes beneath the surface of Brady's book, it is plain that he wrote in a partisan spirit to uphold the royal prerogative, especially to justify the recent measures of the crown against municipal corporations. Charles II. and James II. had nullified the charters of many towns, and had remodelled their constitution to suit the interests of the crown. The town councils, or select aristocratic bodies, were filled with non-resident royalists, who controlled the election of the parliamentary representatives of boroughs. Brady strives to show that municipalities originated in grants of the crown for the benefit of trade; that all their privileges and authority came from the bounty of English kings; that ever since their foundation boroughs had select bodies with non-resident members and exclusive control of municipal government. Hence the king, their creator, had the right to transform these civic governing bodies to suit his inclination and interests. Thus Brady's object was to influence public opinion on one of the most momentous questions of the day; and he succeeded. His specious arguments helped to give a legal title to the existence of select bodies. They now began to prevail more than ever before against the burgesses at large in controverted elections of members of Parliament.[3] There can be little doubt that Brady wilfully perverted the truth to countenance the pretensions of his royal patrons and to promote their cause. Hallam rightly says that Brady's book is "disgraced by a perverse sophistry and suppression of truth."[4] It may be recommended to students as a warning, not as a guide.

The "Firma Burgi" of Thomas Madox (London, 1726) is the work of a painstaking, truth-loving scholar. In his

[1] Gross, "Gild Merchant," i., p. 110.

[2] Cox, "Parliamentary Elections," 148; Riess, "Wahlrecht," pp. 22, 23.

[3] Merewether, "Sketch of History of Boroughs," p. 64.

[4] "Constitutional History," chap. xiii.

Preface he makes a statement which is still pertinent at the present day. "Whoso desireth," he says, "to discourse in a proper manner concerning Corporated Towns and Communities, must take in a great variety of matter, and should be allowed a great deal of Time and Preparation. The subject is extensive and difficult. In England much hath been said by Writers to puzzle and entangle, little to clear it. Insomuch that when I first entred upon discussing onely One part or branch of it, namely the Theme of this Essay, I found myself encompassed with Doubts." Madox throws much light upon the nature of the fee-farm rents, payable by the boroughs to the king or other lord, and upon the obscure subject of municipal incorporation. The solution of many other problems of town history is incidentally aided by his copious extracts from the public records. In fact, his book is a valuable store-house of material illustrating this subject, rather than a comprehensive survey of the history of municipal institutions. One can also learn from Madox the value of dry records, the love of historical truth, and abstinence from hypothesis or hasty generalization. He tells us that "writing of History is in some sort a Religious act. It imports solemnity and sacredness; and ought to be undertaken with purity and rectitude of mind."[1] In all his writings Madox seems to have been imbued with this lofty sentiment. His learning and industry were also prodigious. Hence he is still regarded as a good authority on several subjects.

The most elaborate treatise on the subject of our inquiry is "The History of the Boroughs and Municipal Corporations of the United Kingdom," by H. A. Merewether and A. J. Stephens (3 volumes; London, 1835). This work is commonly recommended as the best authority on English municipal history. The object of Merewether and Stephens in writing their book was eminently practical. They wished to influence public opinion in favor of municipal reform; they fervently desired to break down that huge accretion of abuses to whose growth Brady's pen had contributed.

[1] "History of Exchequer" (1711), p. iii.

The book begins with a long Introduction, in which the authors give an abstract of the results of their investigations; these results are embodied in eleven propositions, whose general drift is to show that the bad features of borough government were abnormal and modern, and that the only way to remedy these evils was to restore the ancient municipal system. The body of the book, consisting of about 2,400 large octavo pages, is filled with extracts from the statute rolls, Parliament rolls, town charters, and other sources relating to boroughs. The arrangement is mainly chronological, the material being grouped under the names of successive monarchs of England. The result is a huge mass of undigested material. There is no systematic or comprehensive treatment of the nature and growth of municipal institutions, nothing to connect the myriad of details save the frequent and wearisome reiteration of the eleven propositions enunciated in the Introduction. The investigations of Merewether and Stephens are, in fact, circumscribed by these propositions, which were framed for the special purpose of promoting municipal reform. For example, though scores of pages are devoted to Domesday Book, no attempt is made to solve the question of prime importance to the student of history, namely, What change in the general condition and constitution of boroughs was wrought by the Norman Conquest? Domesday is interpreted not from the standpoint of the true historian, but from the standpoint of the practical reformer who has certain preconceived propositions to demonstrate.

As to the propositions themselves, the most important of them are untenable. This must be emphatically asserted, notwithstanding the fact that they have been accepted without reservation by Gneist and other eminent writers. As the time at my disposal is very limited, I can merely glance at the most important of these propositions.

The statement so often repeated by Merewether and Stephens, that boroughs throughout Great Britain were essentially alike in the Middle Ages, is certainly erroneous. Any one who carefully studies the subject must perceive

that there is a great divergence between Scotland and England as regards the general history of boroughs. Municipal development in Scotland resembles that of the Continent more than that of England in many important features, for example, in the federative union of Scotch towns, in their more autonomous position relative to the crown, and in the bitter struggle between their crafts and the merchant gild.[1] Even in England boroughs were not cast in one mould, as Merewether and Stephens would have us believe: on the contrary, there was great diversity in local institutions and customs. Hence it is difficult and dangerous to generalize concerning the municipal constitution of England or Great Britain.

Another proposition laid down by Merewether and Stephens is this: that non-resident burgesses were unknown in the Middle Ages, but were gradually introduced through the practice of choosing non-resident members of Parliament to represent towns. This statement is incorrect. In the thirteenth and fourteenth centuries there were numerous non-resident "out-burghers" or "foreign burghers" belonging to Ipswich, Barnstaple, Shrewsbury, Wallingford, and other towns. It is probable that they were introduced through the medium of the trade gilds,[2] not through the medium of Parliament. Non-resident persons originally desired to participate in borough privileges for economic or trade purposes, not for parliamentary or political purposes. Merewether and Stephens also err in strenuously insisting that mediæval burgesses were, as a rule, simply the permanent inhabitants or householders. In most towns the burgher or citizen was originally the holder or owner of a burgage (*burgagium*), which was at first a strip of land, rather than the house upon it, though in course of time the term came to be applied to both the land and the house. Thus it is more correct to say that freeholders, not mere residents or householders, were the original burgesses.[3]

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[1] Gross, "Gild Merchant," i., App. D.

[2] *Ibid.*, i., pp. 66, 67.

[3] *Ibid.*, i., p. 71.

But Merewether and Stephens lay most stress upon the proposition that municipal incorporation was not introduced until the reign of Henry VI. (1440). Their object was to ascribe its origin to as recent a period as possible, because most of the evils of borough government were considered to be the outcome of the idea of incorporation. If this idea was modern, then the abuses must also be modern. Merewether and Stephens's proposition that municipal corporations originated about the middle of the fifteenth century is commonly accepted as their greatest discovery; as far as I am aware, their views on this point have never been cogently contested. In reality, however, they only prove that the *formula* of municipal incorporation, the words employed in the charters incorporating towns, underwent a change in this period. The thing certainly existed long before. It is an indisputable fact that boroughs were granted the privilege of being a *communitas* or *communitas perpetua* by Edward III.,—a century earlier than the date fixed by Merewether and Stephens; and that the word *communitas*, in the same sense, was current in boroughs during the reign of Edward I. —a century and a half earlier than Merewether and Stephens's date.[1] It is equally certain, from the context of the records, that this expression signifies municipal incorporation in the abstract and technical acceptation of the term. Merewether and Stephens, in discussing this and other important topics, expend all their energy upon concomitants. It is far more essential to ascertain how the technical idea of incorporation gradually originated, what potent affinities gradually drew the burgesses together into a single personality, and what municipal incorporation really signified after it came into existence, than to fix the date of the first charter of incorporation.

In short, the materials in this book have not passed through the alembic of a thoroughly critical, historical mind, bent upon finding the truth in all its varied phases, but have been thrown together mechanically, to illumine only so much of the truth as is contained in eleven prac-

[1] Gross, "Gild Merchant," i., p. 93.

tical propositions, the most important of which are untenable. To uphold their views, Merewether and Stephens do not hesitate to resort to sophistry and forensic quibbles. In their book their real vocation is clearly reflected: they are practical lawyers pleading a cause. "Antiquarian research," they exclaim in their Introduction, "for the mere purpose of curiosity may have little claim to general attention; but some advantage will be derived from recalling past events, if the improvement of our present condition be the practical object of the inquiry." This is truly a most laudable sentiment, but it is liable to abuse; "antiquarian research for the mere purpose of curiosity" is better than research which to reform the present deforms the past.

James Thompson's "Essay on English Municipal History" (London, 1867) is an unpretentious little book, consisting mainly of brief sketches of the history of St. Alban's, Leicester, Preston, Norwich, Yarmouth, and Manchester. These are separate little essays between which there is not much coherence. Of the very few broad generalizations which the author ventures to make, the most important relates to the gild merchant. Misled, doubtless, by the abnormal prominence of this institution at Leicester, Thompson ascribes to it a significance which it did not possess. He asserts that, anterior to the reign of Elizabeth, "the governing body in every leading mediæval borough was called the Guild"; and, "to think of a civic community without its Guild would, in truth, be to think of the human body without the vital principle sustaining its activity and progress." As I have dwelt upon this subject elsewhere,[1] I need advance no arguments here to refute Thompson's views. The gild merchant looms up more prominently than any other municipal institution of the thirteenth and fourteenth centuries; but Thompson and Brady both exaggerate its influence upon the burghal constitution, while Merewether and Stephens, going to the other extreme, underestimate its importance.

Of the four works whose value I have briefly estimated,

[1] "Gild Merchant," i., chap. vi.

two (Brady and Merewether-Stephens) are warped by partisan feeling; the other two (Madox and Thompson) are written in an impartial spirit, but are mere fragments of a general history of municipalities. The treatises of Brady and Thompson are now of little value; while those of Madox and Merewether-Stephens still contain much crude material that can be turned to account. All of these authors, except Thompson, have devoted their attention mainly to the relations between the boroughs and the crown; hence, they have neglected the constitution or internal organization of boroughs. Not one of them made much use of the most important and most authentic source of local history, namely, the documents in the town archives. In short, not one of them gives a comprehensive account of the history of boroughs; such a treatise remains to be written. That a book of this sort is much needed is evident from the fact that the central institutions of the mediæval borough, such as *firma burgi*, are wrongly defined even by eminent writers on constitutional history, and few good historical scholars have ever even heard of such very important institutions as the Convention of the Royal Burghs of Scotland.

An historian who at the present day undertakes this work, or who attempts to deal with any general phase of English municipal development, will at the outset have to lament the absence of good histories of individual boroughs.

Let us now briefly consider the nature of these local histories. Most of them are of little use to the student who wishes to investigate municipal institutions in general. Scholarly work is rarely displayed by the town historian of England, either in the selection of the material or in its elaboration. The bulk of his book is made up of verbose antiquarian disquisitions on such subjects as the age of the town, the etymology of its name, and architectural remains, gossip or anecdotes concerning local worthies, long accounts of royal visits to the town, genealogies that are

often inaccurate, and a careful verbatim transcript of epitaphs in the town churchyards. The mania for copying sepulchral inscriptions is not as intense as it used to be. But in a history of Croydon published as recently as 1883, the author attempts to cheer the reader by stating, in the Preface, that he has not, like other unscholarly local historians, contented himself with copying lauditory inscriptions of more influential inhabitants, but that he has gone to the churchyards and copied *all* the inscriptions.[1] Hence this veracious town historian devotes 196 pages of his book to epitaphs, while 56 pages suffice for all remaining topics. Again, some local historians sacrifice everything to inordinate love of genealogy. In Abram's work on the gild merchant of Preston, published in 1884, the author prints the records of the gild in the following scholarly fashion: he gives in full all the lists of members, but omits the laws made by the gild, because the latter are of no interest to him and, as he states, of no use to genealogists. To a real student of history, this is the play of Hamlet with the Prince of Denmark left out.

Town histories of England are also frequently marred by an excessive antiquarian spirit, the fantastic play of the imagination in connection with the remote past (what Tacitus calls *licentia vetustatis*), intermingled with intense local pride. Generally an energetic attempt is made to

[1] "Croydon in the Past, Historical, Monumental, and Biographical." Printed and published by Jesse W. Ward, Croydon, 1883. The Preface begins as follows: "Never before, as far as we can learn, has an attempt been made to publish a work of this description, either in Croydon or elsewhere. Previous local historians have confined themselves to copying the laudatory inscriptions engraved on some of the brasses, tablets, and monumental marbles, erected in the chancels and aisles of the churches, to keep in remembrance the names and deeds of the richer and more influential inhabitants who have passed away. The publisher of this work, not content with copying these obituary notices, has gone to the graveyards and the cemetery and placed on permanent record the names, not only of the great ones, but also of those less favored in this world, lying beneath the humble gravestone or monumental slab, on which their names and ages are recorded, with the date of their death, and on which in many instances their virtues are set forth in humble verse or suitable Scripture text."

trace back the history of the town to Roman times, to show that it was identical with some lost Roman city, such as Calleva or Mediolanum. A few Roman coins, urns, pots, fibulæ, or other vestiges of antiquity, turned up by the spade, often form sufficient data for a long disquisition on the borough's ancient greatness. Madox, in one of his manuscripts in the British Museum, calls this "the Roman dance." He says that one of the first to lead it was Camden.[1] In another part of this manuscript Madox observes that "when men would fain say some splendid thing of a Burgh and can find nothing to say, then they will say that it is a very Ancient Burough."[2] This characteristic of local historians is visible as far back as the twelfth century, when FitzStephen, in describing London, assures us that, according to authentic chronicles, this city was much older than Rome.[3] That the "Roman dance" is still in vogue is evident from such recent works as Tomlinson's "Doncaster" (1887) and Jarman's "Bridgwater" (1889). Rye, in his useful little book on "Records and Record-Searching," alludes to this weakness of local historians when, in his chapter on "How to write the History of a Parish" (p. 21), he gives the following advice: "As you are strong, be merciful. If you can restrain yourself, *don't* discover that your church is of rather earlier date than St. Martin's at Canterbury, or is founded on the site of a Roman temple. You may be right, but to declare yourself will in all probability destroy your credit as a trustworthy topographer."

The opening chapters of a town history generally consist of some such vague conjectures concerning the antiquity of the borough, together with a heavy padding of generalities concerning the Kelts, Romans, and Anglo-Saxons. Most local historians then plunge at once into the fifteenth, sixteenth, or seventeenth century. The town history, strictly speaking, is generally left almost a blank down to the end

[1] Additional MSS., 4, 529, ff. pp. 141–144. Madox refers particularly to the mania for writing disquisitions on the Roman names of towns.

[2] *Ibid.*, fol. p. 209.

[3] "Liber Custumarum" (ed. Riley), p. 9.

of the Middle Ages. For example, Jarman's "Bridgwater" (London, 1889), which is somewhat better than the average local history, begins with various vague remarks concerning Kelts, Roman coins, Cæsar's invasion, the Anglo-Saxons and Danes (including the story of Alfred and the cakes), an extract from Domesday concerning Bridgwater, an account of the lord's manor and castle, some allusions to the Black Death, and a few casual references to the burgesses; then the author launches into the history of the sixteenth and seventeenth centuries.

I do not wish to disparage antiquarian or genealogical studies, or even the exploration of tombstones and gossip concerning kings and local worthies,[1] but I do protest that these subjects should not constitute the backbone of a town history. The growth of the civic constitution, the history of the municipal government, is generally either meagrely treated or wholly ignored. Very rarely indeed do we meet with a local historian who has made use of the town records, the richest source of local history. Loftie's "History of London" is excelled by few English town histories, but he did not explore the archives of London. Nor did Freeman in his book on Exeter; the historian of the Norman Conquest, who certainly knows the value of local records, should have set a better example to local investigators. When English writers learn that the muniments in the town-hall are at least as valuable sources as Roman urns, tombstones, and family genealogies, we shall have better town histories, works that really deserve to be called histories, works that will interest not merely the inhabitants of the town, but also students of general constitutional history, works that will furnish data for a good general treatise on the development of municipal government. Such works would accomplish even more than this. Every local history properly written will add to our knowledge of how the English nation was built up, for every town is an important stone

[1] Such gossip often forms the staple of the local history, especially of its later chapters. For example, Wildridge, in his "Old and New Hull" (1889), devotes about three quarters of his book to the careers of local worthies.

of a great edifice. Moreover, the town government often anticipated and perhaps guided the development of the national government.

As it is, the average so-called town history in England is no history at all, properly speaking, but a heterogeneous mass of antiquarian odds and ends thrown together at haphazard. "In England," says Stubbs, "we do not possess one single complete and detailed monograph on town life."[1] Little can be said to soften this strong statement. There are some useful local histories—useful even to the general historian—but there is not one that can be called a model work of its kind.

The average town history in Scotland is somewhat better than in England. In Ireland and Wales the number of such works is very small, and their quality is no better than in England.

Whatever may be the cause of the low standard of work thus far accomplished in England in this branch of study, it is not due to a lack of easily-accessible materials. Formerly it was very difficult to obtain access to national and local records in England. Before 1835, when select bodies had charge of the finances of rotten boroughs and monopolized municipal government, the town archives were kept hermetically sealed;[2] the civic magnates feared that a knowledge of the past, gleaned from such a source, would betray their usurpation of power to the public, and would cause the overthrow of the aristocratic regime. All this is now changed. Probably in no country in the world are the national and town records more easily accessible than in England. Even in the City of London, where some of the old unreformed spirit still survives, and the civic muniments are jealously guarded, the Common Council do not hesitate to unroll their records to a student of history, to a person whose credentials show that he is really investigating the past, and is not seeking to change the present.

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[1] "Lectures on Mediæval and Modern History," p. 64.

[2] Palgrave in "Proceedings of Record Commission, 1832–33, p. 430; Willmore, Walsall, p. ix.

The time at my disposal will not permit me to describe the contents of the local archives and the other rich sources for the study of town history, the myriad of parchments in the Public Record Office and in the British Museum, the many printed volumes (such as the publications of the Record Commission, the Rolls Series, the Reports of the Municipal Corporations Commission, and the Reports of the Historical Manuscripts Commission) which have never yet been comprehensively investigated by a student of general municipal history. No more promising field of work could be desired; it is almost virgin soil. Americans who have the leisure and wish to add much to the sum of knowledge, should go to England and investigate municipal history.

THE YAZOO LAND COMPANIES

THE YAZOO LAND COMPANIES.[1]

By Dr. Charles H. Haskins, University of Wisconsin.

The spirit of speculation in land was a prominent characteristic of the United States at the close of the last century. Although the Crown had received frequent petitions for land grants in the West, there was little westward migration until the time of the Revolution. Then the number of the emigrants, the cheapness of the lands, and the lack of an established system of sale in small quantities offered many inducements for the formation of great land companies, whose opportunities for speculation were increased by the depreciated currency and the general ignorance concerning the West. So strong did this spirit of speculation become that in 1796 an English traveller could say: "Were I to characterize the *United States*, it should be by the appellation of the *land of speculation*."[2] In spite of its exag-

[1] For assistance in collecting the scattered material for this paper my thanks are due to Dr. Frederic Bancroft, Librarian of the Department of State, Mr. Brinton Coxe of Philadelphia, Mr. B. J. Davis of Atlanta, Colonel R. T. Durrett of Louisville, Mr. Charles Gayarré of New Orleans, Prof. J. F. Jameson of Brown University, Mr. John Jameson of Boston, Prof. W. R. Sims of the University of Mississippi, Prof. W. G. Sumner of Yale University, and Mr. James Wilkinson of New Orleans, to the assistants of the Clerk of the Supreme Court of the United States, and to the many librarians who have lent me rare works relating to the subject. Through the kindness of President William Preston Johnson and Professors D. J. Lingle and J. A. Fernandez de Trava of Tulane University I have obtained copies of manuscripts in the library of the university. I am particularly indebted to Hon. William Wirt Henry for the loan of papers of Patrick Henry, and to Colonel Charles C. Jones, Jr., and my colleague Prof. Frederick J. Turner for reading the proof-sheets of the paper.

[2] Priest's "Travels," 132. See also La Rochefoucault's "Travels" (London, 1799), i., 144, ii., 600, 608–617; Dwight's "Travels," i., 218–222.

geration this assertion contained much truth. "All I am now worth was gained by speculations in land," wrote Timothy Pickering in the same year,[1] and many eminent men could have said the same, often with a later experience quite similar. Land speculation involved Washington, Franklin, Gallatin, Patrick Henry, Robert Morris, and James Wilson, as well as many less widely known.

Land companies found a particularly inviting field in the South, where large tracts of land still remained in the hands of the States. Scarcely a State escaped the speculators, but the most extensive operations were carried on in Georgia, where the magnitude of the speculations, the means which were employed, the resistance of the State, the persistent efforts of the purchasers to obtain satisfaction, and the final settlement by Congress and the Supreme Court, all united to form an important chapter of our history.

THE WESTERN TERRITORY OF GEORGIA.

At the close of the Revolution the territory north of the thirty-first parallel which is now included in the States of Alabama and Mississippi was the subject of various conflicting claims. South Carolina contended that this territory was comprised within the limits of her original charter; Georgia claimed it by virtue of the commissions issued to Governor Wright; the United States maintained that it had been withdrawn from the domain of these colonies by later acts of the Crown, conquered by the nation in the Revolution, and ceded to the nation by the treaty of peace; while Spain denied England's right to cede lands below 32° 30′, and held that region as a conquest from England. Georgia's assertion of title, re-enforced in 1787 by the withdrawal of South Carolina,[2] was resisted by the federal authorities. In 1788 a proposed cession of the region below 32° 30′ was rejected by Congress because it contained

[1] Pickering's "Pickering," iii., 296.

[2] Except from a narrow strip on the north, soon ceded to the United States. Spain relinquished her claim in 1795.

as a condition the guarantee of the remainder,[1] and in 1797 a committee of the Senate made a report strongly adverse to the State's claim.[2] The final victory, however, remained with Georgia. In the compromise of 1802 all her demands were granted, and in 1827 the validity of her title was affirmed by the Supreme Court in an opinion which thus sums up the matter:

"There are several reasons for putting the claim of the United States out of the question. She has abandoned it, and, it is very clear, could never have maintained it. The very ground on which she denied the capacity of Spain to conquer, or take by cession, the territory on the Mississippi, was fatal to the pretensions set up by her against Georgia and South Carolina, to wit, that Spain could not acquire by conquest a territory within the limits claimed by an ally in the war. . . . There was no territory within the United States that was claimed in any other right than that of some one of the confederated States; therefore, there could be no acquisition of territory made by the United States distinct from or independent of some one of the States."[3]

Aside from the question of Georgia's title to the lands, there were serious difficulties in the way of making use of them. They were occupied by the Chickasaws, Choctaws, Cherokees, and Creeks, tribes over which the federal government claimed and exercised an immediate protectorate. "No one could say what was the value of Georgia's title, for it depended on her power to dispossess the Indians; but however good the title might be, the State would have been fortunate to make it a free gift to any authority strong enough to deal with the Creeks and Cherokees alone."[4] The attacks of the southern Indians on frontier settlements were kept up by the intrigues of the Spaniards, themselves sure to oppose by force all attempts to settle the region south of the Yazoo. The value of western lands for com-

[1] Journals of Congress, iv., 834.

[2] "American State Papers, Public Lands," i., 79. References are to the single-column folio edition.

[3] Harcourt *vs.* Gaillard, 12 Wheaton, 523. Compare Fletcher *vs.* Peck, 6 Cranch, 87. The documents bearing on Georgia's claim were collected by the Attorney-General in 1796, and are printed in "State Papers, Public Lands," i., 34–67. The foregoing statement of the grounds of the various claims is, of course, not exhaustive.

[4] Henry Adams's "History of the United States," i., 303.

mercial and agricultural purposes depended almost entirely on the navigation of the Mississippi, over which Spain exercised sole control. So strongly was this felt in the West, that to gain the right to navigate the Mississippi many were willing to leave the Union and become Spanish subjects. In the light of these difficulties, Georgia was quite ready to reap a small financial gain by disposing of the lands on the first offer of favorable conditions.

THE SOUTH CAROLINA YAZOO COMPANY.

The advantages of a commercial settlement on the Mississippi near the mouth of the Yazoo were readily apparent. The only obstacle seemed to be the opposition of Spain and the Indians, and to remove this a number of citizens of South Carolina and Georgia directed their efforts. In 1785 an application was made to Georgia for a grant of lands. As that State "did not yet feel ready to dispose of her territory," nor, doubtless, to protect it from Indians and Spaniards, all that was obtained was the organization of a county to be known as Bourbon, in which, when lands were granted, actual settlers were to have the preference at a price not to exceed a quarter of a dollar an acre. This county, which continued in existence three years, was bounded by the Mississippi, the Yazoo, the thirty-first parallel, and the limit of the territory relinquished by the Indians.[1] The consent of the Choctaws to the proposed settlement was sought by the purchase from one John Wood of a deed which he had obtained from them to a tract of two or three million acres lying near the mouth of the Yazoo. For colonists the projectors looked to Kentucky, whence John Holder[2] engaged to conduct four hundred families to Walnut Hills (now Vicksburg) before the end of 1789. In the execution of this contract Holder failed entirely. Meanwhile the original plan of the projectors was enlarged,

[1] "Public Lands," i., 100.

[2] A captain in the Revolution. Collins's "History of Kentucky," i., 13, 255; Forman's "Narrative of a Journey down the Ohio and Mississippi," edited by L. C. Draper, 52.

chiefly through the influence of Major Thomas Washington.[1] Articles of association were adopted, constituting a company to be known as the South Carolina Yazoo Company. The original members were but four in number, Washington of Georgia, and Alexander Moultrie, William Clay Snipes, and Isaac Huger of South Carolina, Moultrie being appointed director. Among those who joined later was the famous Creek chief Alexander McGillivray. To the former idea of a commercial station there was now added the plan of securing an extensive territory and opening it to agricultural settlement.[2]

THE GRANT OF 1789.

Accordingly, November 20, 1789, a petition was presented to the Georgia legislature, setting forth that the company, having already begun a settlement under the Bourbon act, desired a confirmation of that interest. In this they acted "as well from a motive of general good to mankind and a happiness and prosperity of this State and the union; as their own." They had "in respect to their own Settlements established Connections in Europe, America, and in this State; whereby" it was certain that as soon as their application was granted, "an african trade and European Commerce" would "take place at the Yazoo to an immense and vast amount."[3] Applications were at the same time

[1] Washington, whose real name was Walsh, was an unprincipled speculator, afterward hanged in Charleston for counterfeiting South Carolina indents. —*Georgia Gazette*, March 24, 31, 1791.

[2] "An Extract from the Proceedings of the South Carolina Yazoo Company" (Charleston, 1791), i., 15–23, 25; Gayarré's "History of Louisiana under Spanish Domination," 272, 273.

[3] Papers of the United States Supreme Court, 1798: Moultrie *et al. vs.* State of Georgia *et al.*, Document H. Compare a letter of Francis Watkins to Patrick Henry, July 5, 1790, in which he speaks of being "successful on the other side of the Atlantic," and another letter in the Henry MSS., dated February 10, 1790, and evidently written by Moultrie to the Virginia Yazoo Company: "Since the passing of the Law, much has been done in this State, in spreading the Basis of a Commercial System, in Connection with our Company, throughout various Parts of Europe and America: both in regard to Population, from those countries, as well as the various branches of Traffick, & the Affrican Trade."

received from the Virginia Yazoo Company and the Tennessee Company. A bill was brought into the Senate and after amendment passed, on the 7th of December, by a vote of six to three. When it reached the House, there appeared another set of petitioners, the Georgia Company, offering a much higher price for the lands. Efforts to insert this company among the other applicants failed, as did also a motion to increase the amount to be paid; and the bill passed without amendment, and received the Governor's signature on the 21st of December.[1]

This act granted to the South Carolina Yazoo Company a tract bounded by the Mississippi, the thirty-third parallel, the Tombigbee, and a line drawn east from a point just above Natchez, and containing over 10,000,000 acres of what is now southern Mississippi and Alabama. The Virginia Yazoo Company received 11,400,000 acres, being all the land of Georgia west of Bear Creek and the Tombigbee and north of the thirty-third parallel. The Tennessee Company's grant included 4,000,000 acres in the region of the Tennessee. The lands in each case were to be reserved as a pre-emption for two years, and at the end of that period, if the stipulated amounts had been paid, grants were to be issued to the companies as tenants in common in fee-simple. The amounts to be paid were: South Carolina Company, $66,964; Virginia Company, $93,741; Tennessee Company, $46,875. The companies were to refrain from attacks on the Indians. The State was not to be liable for previous claims, nor to be put to expense in keeping peace between the grantees and the Indians or in extinguishing the Indian title.[2]

RELATIONS WITH SPAIN.

The South Carolina Company at once began active measures toward forming a settlement. As their agent in the West they selected Dr. James O'Fallon, a Revolutionary

[1] *Georgia Gazette*, January 7, 1790; Stevens's "History of Georgia," ii., 464 ff. The original public records relating to the sale have been lost or destroyed.

[2] "American State Papers, Indian Affairs," i., 114; Watkins's "Georgia Digest," 387; Moultrie *vs.* Georgia, Document A.

soldier, whom they likewise admitted as a shareholder. He was instructed to proceed at once to Lexington, Kentucky, to bring Holder to account, and, if it could be done peaceably, to go down to the Walnut Hills with four or five hundred settlers. He should then "proceed to New Orleans and there take every possible step for securing the concurrence and favor of the Spanish *government;* to represent to them fully the commercial and various other advantages which they might derive from the vicinity and friendship of the company's settlement; to use every endeavor for preventing any difference or dispute between the company's people and the Spaniards or Indians, to make this a leading object of every measure, and to establish on the firmest footing, the company's reputation for justice, humanity, and an accommodating disposition." He also received private instructions, the contents of which are not known.[1] Edmund Phelon was soon afterward sent to the Yazoo country to prepare the Choctaws for the intended settlement.[2]

O'Fallon set out early in the spring of 1790, reaching Lexington about the beginning of May. On his way he secured the co-operation of General McDowell of North Carolina, of Colonel Farr of South Carolina, and of John Sevier, who undertook to act as sub-agent for the Franklin settlements. Each was promised a share in the company's purchase.[3]

On his arrival in Kentucky O'Fallon was brought into close relations with General James Wilkinson and thus entered the maze of Spanish intrigues. Wilkinson was attempting to effect the separation of Kentucky from the Union, and for his services received a regular pension from Spain.[4] Informed of the company's designs by Major

[1] "Extract from the Proceedings," i., 26, 27.

[2] "Public Lands," i., 168.

[3] "Extract from the Proceedings," i., 26, 30, 31. These acts, as well as later grants to Scott and Muter in Kentucky, were approved by the company but never formally confirmed.

[4] This estimate of Wilkinson's character has been attacked by Mr. James Wilkinson of New Orleans in the *New Orleans Times-Democrat* of April 15 and May 20, 1883, but Wilkinson's corruption cannot well be questioned in

Washington in February, 1789, he discussed the subject with Miro, the Spanish Governor of Louisiana, and wrote the company offering to supply their need of a man of experience and popularity who should act as agent and secure the assistance of Miro, without which the enterprise would be wholly impracticable. They must, he said, obtain through Spain further concessions from the Indians, for their Choctaw deed was not worth a pinch of snuff.[1] Moultrie promptly accepted the offer of Wilkinson's services, but wrote him that the agency had already been granted. Of this letter O'Fallon was the bearer.[2]

Wilkinson had informed Miro of his letter to the company, written "to obtain the agency of that affair, and to induce the company to sue for" Miro's protection. "If I succeed," he said, "I am persuaded that I shall experience no difficulty in adding their establishment to the domains of his Majesty, and this they will soon discover to be their interest. . . . I have undertaken to place in your hands the whole control of this affair. . . . I will keep you well informed of every movement which I shall observe, and it will be completely in your power to break up the projected settlement, by inciting the Choctaws to incommode the colonists, who will thus be forced to move off and establish themselves under your government."[3] Miro replied that the territory granted to the company, so far as it did not belong

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view of the evidence contained in Clark's "Proofs of the Corruption of General Wilkinson," Gayarré's "History of Louisiana," and the letter of Yrujo to Cevallos, published in Henry Adams's "History of the United States," iii., 342. It is possible that he did not receive a pension until later. See John Mason Brown's Frankfort Centennial Address (Louisville, 1886), 7, 16.

[1] Wilkinson to Moultrie, Huger, Snipes, and Washington, January 4, 1790. A translation of the original, copied from the archives of Spain, is in the library of Tulane University. Part of it has been retranslated by Gayarré, "Spanish Domination," 274. The version in the "Extract from the Proceedings" (i., 24) differs somewhat from the Spanish copy. For the interesting history of the Tulane University collection see the Report of the Secretary of State of Louisiana for 1850; *New Orleans Times-Democrat*, June 3, 1883; House Miscellaneous Document No. 22, 46th Congress, second session.

[2] "Extract from the Proceedings," i., 24, 25; Gayarré, 281.

[3] Gayarré, 276.

to the Indians, was in the possession of Spain, and that all attempts to settle it would be resisted.[1] Convinced of the necessity of gaining Miro, O'Fallon wrote him a remarkable letter. After setting forth pompously his relations to the company and his well-known devotion to the interests of Spain, he says that, having long ago conceived this great project, he had enlisted in it the members of the company and obtained from them plenary powers for its execution. Without their having at first suspected his object, he had "insensibly prevailed upon them to acquiesce in" his "political views (after the obtaining of the concession), and led them to consent to be the slaves of Spain, under the appearance of a free and independent colony,[2] forming a rampart for the adjoining Spanish territories, and establishing with them an eternal, reciprocal alliance, offensive and defensive." Separation from the Union had been resolved upon, an example that would be followed by the other western settlements. In return for her secret co-operation Spain would receive everything except the sacrifice of their liberty of conscience and their civil government. O'Fallon's authority for these statements would appear when he arrived at New Orleans and showed his secret instructions.[3] Not long afterward Wilkinson wrote again to Miro, approving O'Fallon's plans, and adding: "If the sentiments which he invariably expresses are to be believed (and I am inclined to put faith in them), he is a great friend to Spain."[4]

In August, Miro sent to Madrid copies of this correspondence, together with his comments upon it. He showed the advantages of such a settlement in defending Louisiana against the United States and in extending the commerce of New Orleans; yet he doubted the policy of "taking a foreign state to board." All the benefits of such a settlement, he argued, could be secured if Spain should people the territory on her own account. In case a middle course

[1] Gayarré, 282.

[2] Not "State," as Gayarré translates *colonia*.

[3] Lexington, May 24, 1790. Spanish MSS., Tulane University; almost entire in Gayarré, 288–293.

[4] *Ibid.*, 293.

were preferred, it might be proper to permit the company to colonize the territory as subjects of Spain under the regulations imposed upon all immigrants. Miro added that he had secured the opposition of all the Indian tribes to the three land companies, and had promised to supply the Indians with powder and ball for the defence of their rights. To O'Fallon he would still hold out hopes of success.[1]

How far the South Carolina Company was involved in intrigues with Spain it is difficult to determine. As early as October, 1789, they had written to Holder to cultivate the friendship of the Spaniards as much as possible and conceal nothing from them. "We consider," said they, "their interests and ours as intimately connected and inseparable. . . . We confidently flatter ourselves that we shall form a highly advantageous rampart for Spain, and that we shall ourselves feel that such should be the case."[2] This letter contained nothing that indicated the least subordination to the United States, and Miro inferred from it that the company intended to form an independent state.[3] In the elaborate plan of colonization drawn up by the secretary they were recommended to procure an efficient civil establishment from Georgia, and when the population should reach sixty thousand, to form a new State under the laws of the Union.[4] Small weight, however, should be given these expressions, since the pamphlet in which they are found was designed for the public, if not also for the federal authorities,[5] and the plan represents at best the opinion of the secretary only. If O'Fallon expressed the ideas of the company, the matter is clear, but it seems possible from the exaggerated tone of his letter that here, as in some other respects, he exceeded his authority. To pronounce a final opinion would be unsafe in the absence of O'Fallon's secret

[1] Gayarré, 293–300. [2] *Ibid.*, 273. [3] *Ibid.*, 287.

[4] "Extract from the Proceedings," iii., 9, 12.

[5] The "Extract from the Proceedings" was sent to Washington, as is shown by the following on the fly-leaf of the copy in the library of the Maryland Historical Society: "To George Washington Esq^{r}; President of the United States From His most Ob^{t}. hum: Ser^{t}: Ax^{r}: Moultrie Presid^{t}: S^{o}: Car: Yaz: Com^{y}: July 13th: 1791."

instructions, but the fact that he claimed these instructions as authority for his proposals throws strong suspicion upon the company.

O'FALLON IN KENTUCKY.

The action of Georgia in disposing of her western territory did not escape the notice of the federal authorities. The matter was discussed by the Cabinet as early as April, 1790,[1] and in August Washington issued a proclamation setting forth the law and treaties which protected the Indians, and ordering their observance.[2] One month later, O'Fallon, acting, we are told, on the advice of General St. Clair, wrote the President a characteristic letter, asking permission to arrange for trade between his colony and the Indians, and to purchase more lands within the company's charter. "Your Excellency," he writes, "may depend upon my discretion in the use of such authority, and that your confidence will, in no one instance, be abused; without such trust, evils may happen."[3]

Meanwhile, O'Fallon went busily on with his preparations, even claiming for them the authority of Congress.[4] Extensive contracts were made for negroes and provisions, transportation and shelter. A battalion was organized, "aptly detailed and apportioned into one troop of cavalry, one company of artillery, and eight companies of infantry riflemen, as in order arranged, at foot; . . . these troops being intended, although no danger is, at present, apprehended, to ensure the greater security of the company's rights, and their own; as well as to the rest of their fellow settlers' lives, liberties, and properties."[5] George Rogers

[1] Washington's "Diary," 129 ff.; Jefferson's "Writings," vii., 467.

[2] "American State Papers, Indian Affairs," i., 112, 172.

[3] "Indian Affairs," i., 115. Compare "Extract from the Proceedings," i., 32, 33; and Maclay's "Journal" (edition of 1890), 378.

[4] "Indian Affairs," i., 114.

[5] Military articles of contract, etc., "Indian Affairs," i., 115–117; "Extract from the Proceedings," i., 33–35. Understanding by O'Fallon's plan for a "defensive establishment" nothing more than a colony armed for its own defence and a fort for refuge, the company had signified their approval. Later, they ordered him to disband the battalion. "Extract from the Proceedings," iii., 15.

Clark, it was rumored, would be chief in command,[1] and O'Fallon even declared that he had "no doubt of the *battalion* being speedily put upon federal *establishment* and pay."[2] It was expected in Lexington that General Scott would take five hundred families to the settlement, and that Wilkinson and Sevier would follow, each with a thousand fighting men and their families. "Gen. McDowell accompanies the Frankliners from the Long Island, where they are to embark with 300 from the back parts of North Carolina, and 200 with Capt. Alston from Cumberland."[3] In his last despatch to the company, dated Kentucky, November 6, 1790, O'Fallon says that he has learned from his clerk at New Orleans (Nolan) that he need expect no opposition from the Spaniards or Indians, and has accordingly "closed with the golden moment of opportunity" and resolved to send down at once three hundred troops. A second division of three hundred troops and six hundred families would follow in February.[4]

Again did the federal government interfere, this time more effectively. A proclamation was published warning O'Fallon's associates,[5] and the United States district attorney was requested to proceed against him according to law. In case these measures should not prove sufficient, military intervention was proposed.[6] After this, O'Fallon's extensive preparations suddenly disappear. Wilkinson deserted him, his associates fell away, and he married a sister of George Rogers Clark and settled in Kentucky. The company heard nothing further from him, and in August, 1791, their agent left Walnut Hills. The services of the district

[1] Wilkinson to Philip Nolan, quoted in Claiborne's "History of Mississippi," i., 157.

[2] "Extract from the Proceedings," i., 35.

[3] Letter from a gentleman in Lexington to a friend in Philadelphia, October 20, 1790, in *Kentucky Gazette*, February 26, 1791.

[4] "Extract from the Proceedings," i., 38, 39.

[5] *Gazette of the United States*, March 23, 1791; *Georgia Gazette*, April 14; *Kentucky Gazette*, May 14.

[6] Jefferson's "Writings," iii., 256; Knox to St. Clair, "Indian Affairs," i., 172.

attorney were not needed; Washington's proclamation was sufficient.[1] Both Spain and the Indians had made vigorous preparations to oppose the expedition, and the consequences of a collision might have been serious.[2]

LATER HISTORY OF THE SOUTH CAROLINA COMPANY.

Efforts to settle the lands had failed; efforts to complete the purchase failed also. August 13, 1790, the company paid into the State treasury $2,703.86 in Georgia paper medium, and on the 11th of September a further payment of $2,142.86 was made. On the 19th of December, 1791, just before the expiration of the period allowed by the act, representatives of the company tendered the State Treasurer the remainder in South Carolina paper money, Continental money of 1776, and Georgia certificates of various dates.

[1] Pope's "Tour through the Southern and Western Territories of the United States," 29; Forman's "Journal," 52; "Virginia Calendar of State Papers," v., 287; Marshall's "History of Kentucky," i., 372, 373; "Public Lands," i., 169; Haywood's "History of Tennessee" (edition of 1823), 254; Claiborne's "Mississippi," i., 157; *Gazette of the United States*, May 4, 1791, and other newspapers of the time. Claiborne says that the expedition was suppressed by General St. Clair, under an order from the Secretary of War, and Haywood says that it was prevented by military force. I can find no evidence for these statements; the writers may have been misled by the letter of Knox to St. Clair, cited above. Military interference was to be resorted to, if at all, only after the other means had failed. If arms had been used, the fact would have been widely known. Marshall says that the President's proclamation stopped enlistment, and the company's agent at Walnut Hills considered this the cause of the failure of the expedition. Pope, who had excellent opportunity to know, hints that O'Fallon's ardor was cooling even before the President's proclamation. No record of a prosecution of O'Fallon exists either in the Department of Justice or in the district court.

[2] Gayarré, 300; *Georgia Gazette*, January 6, 1791; Pope's "Tour," 28, 29. Compare the following extract from the diary of John Halley, for which I am indebted to the kindness of Col. R. T. Durrett, of Louisville. Halley left Boonesboro, Ky., April 27, 1791, and on the 29th makes this entry: "On 29th passed Yazoo River nine miles below new town started by the Spaniards. Sentinels with taps. Called on the Governor and he asked me what was the news from Kentucky, and what had become of Dr. O'Fallon and company; and if the men were coming down to settle at that place. I told him not that season. The commandant walked with me & showed me his artillery among which was a 24 pounder. He pointed to it and said it was bone *(sic)* for Dr. O'Fallon. There were 9 or 10 twelve pounders."

This the Treasurer declined to receive, and a formal certificate of such tender and refusal was given, the earlier payments remaining in the treasury. The State authorities held that the act contemplated payment in specie only, and that if any doubt had existed on this point, it was removed by a resolution passed by the legislature in June, 1790, directing the Treasurers after the following August to receive only gold and silver in discharge of debts due the State.[1]

When the company is next heard from, it is in the Supreme Court of the United States. In 1796 they filed a bill in equity against the State of Georgia and the Georgia and Georgia Mississippi companies, grantees of the lands under the sale of 1795, who, it was alleged, had purchased with full knowledge of the prior claim. The case was set for a hearing at the August term, 1797, and adjourned until the following term. In January, 1798, the eleventh amendment to the Constitution was declared in force. Its effect was to put an end to all suits brought against a State by citizens of another State,[2] and as Moultrie *vs.* Georgia was of that character all proceedings in it were stopped.[3]

In 1802 Georgia ceded to the United States her rights to the territory west of the Chattahoochee. The task of settling private claims was thus left to Congress, and Madison, Gallatin, and Levi Lincoln were appointed to receive petitions and report. In their petition to these commissioners the South Carolina Company, maintaining that they had fulfilled their part of the contract with Georgia, claimed indemnification for the loss of their lands and for the expenses incurred in connection with the grant, thus asking the United States to compensate them for the money advanced to O'Fallon, who was engaged, not only in raising an expedition illegally, but,

[1] Papers in Moultrie *vs.* Georgia, especially Documents E, F, G, and C; "Extract from the Proceedings," Appendix, 5, 6; "Public Lands," i., 165 ff., 201.

[2] Hollingsworth *vs.* Virginia, 3 Dallas, 378.

[3] Papers of the Supreme Court, 1798; "Public Lands," i., 167. In 1797 the company tried to effect a transfer of their land to the United States. John Adams's "Writings," viii., 551.

if we are to believe his own letters, in founding a settlement independent of the United States and dominated by Spain. The question of compliance with the conditions of the sale turned on the medium of payment which the act demanded. On its face the act simply directed to be paid "the amount of sixty-six thousand nine hundred and sixty-four dollars." To show that payment in paper was thus permitted, the company introduced the testimony of several who had been members of the legislature in 1789 and had understood that the lands were to be paid for in paper, as well as a protest in which the Speaker of the House and thirteen others had objected to the sale because it allowed payment in audited certificates.[1] Attention was also called to their petition of 1789, offering to pay "in public securities or the money of the State."

The commissioners reported February 16, 1803, that, in their opinion the company had no claim upon the government either for land or for compensation. In the following December the company presented their petition directly to Congress. The committee to which the petition was referred pronounced decidedly against it, holding that the act should be interpreted by itself, and that, if other matter were brought in, the resolution of June, 1790, forbidding payment in certificates, was fatal to the claim. The House resolved to give the company one more chance. January 16, 1804, Moultrie was heard in their behalf at the bar of the House and the matter recommitted. The opinion of the committee remaining unchanged, in March their report was laid on the table and the whole subject dropped.[2]

PATRICK HENRY AND THE VIRGINIA YAZOO COMPANY.

In the preface to the fifth volume of the "Virginia Calendar of State Papers,"[3] Mr. Sherwin McRae speaks at some

[1] Moultrie *vs.* Georgia, Document B; *Georgia Gazette*, January 7, 1790.

[2] Annals of Congress, December 28, 1803, January 7, 11, 16, 23, 25, March 13, 1804; "Public Lands," i., 133, 165–172, 197. For a later petition in behalf of Washington's estate, see House Journal, 10th Congress, 166.

[3] Pp. iv.–vii.

length of the dangers which threatened the United States in this period through the schemes of land speculators. Our escape from these schemes, he tells us, was due to the patriotism and public virtue of Patrick Henry, who, in a deposition made in 1777,[1] says that, on becoming a member of the first Virginia convention and the first Continental Congress, he determined to "disclaim all Concern and Connecion with Indian Purchases," although shares were frequently offered him. The reasons given for this resolution were the enormous extent of the purchases, the probability of being called upon to settle disputes over such claims, and, in event of war, the likelihood of the soil being claimed by the American States,—a reason which may indicate the man of business as well as the patriot. Thus, according to Mr. McRae, the great evils involved in the success of the Indiana and New Madrid companies were avoided.

Patrick Henry, however, did not always hold aloof from land companies. The opportunities for successful investment were too evident to escape the eye of one who "was peculiarly a judge of the value and quality of lands."[2] Early in 1789 he began to inquire of Grayson and Lee, the United States Senators from Virginia, concerning the title to the western territory of Georgia, and the attitude of Spain toward the navigation of the Mississippi and emigration from the United States.[3] Assured that the territory unquestionably belonged to Georgia, Henry, with David Ross, Abraham B. Venable, Francis Watkins, and other prominent Virginians, later in the same year formed the Virginia Yazoo Company for the purchase of lands from Georgia, and, recognizing the advantages which the South Carolina Company claimed, made overtures for a consolidation.[4] When this attempt failed, they petitioned the

[1] "Virginia Calendar of State Papers," i., 289.

[2] Spencer Roane, MS., quoted in Tyler's "Patrick Henry," 341.

[3] Grayson to Henry, June 12 and September 29, 1789, in Tyler's "Letters and Times of the Tylers," i., 165–171; Richard Henry Lee to Henry, May 28 and September 14, 1789, in Lee's "Life and Correspondence," ii., 95, 99.

[4] Extract from the "Proceedings of the South Carolina Yazoo Company," i., 23.

Georgia legislature, and received the grant described above. Their plans, they declared, did not involve immediate colonization. Every one was expressly forbidden to settle within their bounds, their intention being "first to complete their payments to the State for the Lands purch'd; next to quiet the Indian claims agreeably to Law, and to have the permission and approbation of the General Governm't for the settlement, and that the first Emigrants shall be accompanied with civil & Militia officers Legally appointed."[1]

The company's offer of depreciated certificates was, however, refused by the State authorities, and no attempt was made to settle the lands. In 1794 they decided to make another effort to secure the grant. Robert Morris, Wade Hampton, and others agreed to co-operate, and John B. Scott was sent to Georgia to obtain from the legislature a fulfilment of the contract, and, if necessary, to make concessions. At Augusta, Scott found the new Yazoo companies too strong for him, and accordingly threw up his agency and made the best terms he could for himself in the Upper Mississippi Company. The Virginia Company resolved to sue the State of Georgia, and retained counsel for this purpose. Nothing came of this, nor did their petition to Congress, presented along with the one from South Carolina, bring them any relief. When their claim came before Congress, it was suggested that they were involved in the fraudulent purchases of 1795, and this appeared to the congressional committee a question of such intricacy that no satisfactory conclusion could be drawn. The history of Scott's transactions shows clearly that the company had no share in the grant of 1795.[2]

[1] Ross to Governor Randolph, April 10, 1791, "Virginia Calendar of State Papers," v., 288. Compare Cowan's petition in "Public Lands," i., 172. Similar expressions were credited to Henry, who added that if the protection of Congress were not granted, they would have recourse to their own means. Washington's "Diary," 163.

[2] "Our Opponents were full handed, paid down 100,000 dollars—& our Agent had no more than his own purse (?), & what I could give him barely sufficient to defray his expenses. Your Money came too late in Aid for that purpose." The New York and Philadelphia men failed to send anything.

Patrick Henry's relations with the Virginia Yazoo Company are especially interesting by reason of certain charges made by Thomas Jefferson in a manuscript first published in 1867.[1] This manuscript, whose genuineness has not been questioned, is evidently the one furnished Wirt while he was preparing the "Life of Henry." The parts relating to the Yazoo purchase are as follows:

"about the close of the war he [Henry] engaged in the Yazoo speculation, & bought up a great deal of depreciated paper at 2/ & 2/6 in the pound to pay for it. . . . from being the most violent of all anti-federalists however he was brought over to the new constitution by his Yazoo speculation, before mentioned. the Georgia legislature having declared that transaction fraudulent & void, the depreciated paper which he had bought up to pay for the Yazoo purchase was likely to remain on his hands worth nothing. but Hamilton's funding system came most opportunely to his relief, and suddenly raised his paper from 2/6 to 27/6 the pound. Hamilton became now his idol," etc.

When he says that the Georgia legislature declared the transaction fraudulent and void, Jefferson evidently confuses the grant of 1795 with the earlier speculation.[2] Patrick Henry certainly had no share in the purchase of 1795. Whether the value of his certificates was increased by the assumption of State debts is, however, another question, and on this we have a contemporary statement of Jefferson, free

"Mr. Scott finding the object lost, sold his certificates @ 6/8 in the £—& took one share of another Co. which consisted of 20 shares, & purchased about 1&½ Millions Acres on the Northern boundary, sent (?) relinquishing his Agency & all further connections with our Co." Francis Watkins to Henry, March 7, 1795, Henry MSS. Owing to the gaps in the Henry MSS., and the loss of Henry's letters to Francis Watkins, our knowledge of the history of the company is incomplete. Additional information is given in "Public Lands," i., 172–179, 197–203.

[1] It appeared first in the *Philadelphia Age*, and was reprinted in the *Historical Magazine*, xii., 93.

[2] In this he anticipated many later writers. Thus Hildreth (iv., 643) connects Henry with the fraud of 1795, and McMaster makes his account of the Yazoo companies of little worth by confusing the sales of 1789 and 1795 (ii., 479, 480). The same confusion lurks in the singularly inaccurate note in the "Narrative and Critical History of America" (vii., 534). This note would have been improved if the facts, as well as the references, had been taken from Alexander Johnston's excellent article in Lalor's "Cyclopædia of Political Science" (iii., 1127–1130).

from the confusion of the later manuscript. In a letter to Washington in 1791 he says:

"Arthur Campbell has been here. he is the enemy of P. Henry. he says the Yazoo bargain is like to drop with the consent of the purchasers. he explains it thus. they expected to pay for the lands in public paper at par, which they had bought at half a crown a pound. since the rise in the value of the public paper, they have gained as much on that as they would have done by investing it in the Yazoo lands; perhaps more, as it puts a large sum of specie at their command, which they can turn to better account. they are, therefore, likely to acquiesce under the determination of the government of Georgia to consider the contract as forfeited by non-payment."[1]

Patrick Henry probably made substantial gains by his purchases of Georgia paper. About the time of the sale Georgia certificates were worth between two and three shillings in the pound,[2] and the letters of Scott, who went to Georgia early in 1790 to buy depreciated paper for the company, indicate that he obtained many, if not all, of the company's certificates at this price. A large part of the certificates thus purchased rose greatly in value after the assumption of State debts, and Patrick Henry and others of the company were enabled to dispose of their paper at a considerable profit.[3] Hon. William Wirt Henry has shown that there is no ground for the insinuation that this transaction influenced Patrick Henry's political opinions.[4]

THE TENNESSEE COMPANY.

The history of the Tennessee Company centres about Zachariah Cox, one of the most energetic adventurers in the Southwest. Cox had occupied lands near the Muscle Shoals in 1785 and saw clearly the advantages of a commercial settlement in that region, commanding, as it would, the trade of the Tennessee, and leading by easy portages through the

[1] April 24. Jefferson's "Writings," iii., 251; State Department MSS. See also his letter to Gouverneur Morris, "Writings," iii., 198.

[2] Protest of the minority of the Georgia legislature, *Georgia Gazette*, January 7, 1790; "Massachusetts Historical Collections," sixth series, iv., 421; Charlton's "Life of James Jackson" (Augusta, 1809), part I., vi.–vii.

[3] Henry MSS.; "Public Lands," i., 168, 169, 177.

[4] *Historical Magazine*, xii., 368–372.

Tombigbee to the Gulf. After the grant of 1789 had been secured, he and his associates, including John Sevier and many prominent men in eastern Tennessee, announced that they would embark January 10, 1791, for the purpose of forming a settlement near the Muscle Shoals on the southern bend of the Tennessee. Liberal inducements were offered, and in spite of warnings from the President and Governor Blount, eighteen men joined in erecting a block-house and other works of defence, but were forced to withdraw by the arrival of a party of Cherokees. Two small payments were made to Georgia and the remainder of the purchase money refused, just as in the case of the other companies.[1]

Cox was not easily disheartened. Further preparations failing to secure a settlement, his company came forward again as purchasers in 1795, and in the speculations of that year Cox took an active part. We afterward find him petitioning Congress for a loan to enable him to carry on trade with the Indians, opposed by troops when attempting a settlement, arrested at Natchez for opening a land office, escaping at night only to be recaptured at Nashville, planning canals to connect the Tennessee with the Tombigbee, and finally ending his restless life at New Orleans.[2]

THE SECOND YAZOO SALE.

The failure of the ventures of 1789 did not diminish the fever of speculation. While the authors of the "Pine Barren Speculation" were making enormous profits in the south of Georgia,[3] the legislature was importuned for a second

[1] "Indian Affairs," i., 112, 113, 115, 126, 172, 173; Haywood's "Civil and Political History of Tennessee," 159, 252, 255, 256; Putnam's "History of Middle Tennessee," 331, 332, 346; Ramsey's "Annals of Tennessee," 549–551; Washington's "Writings" (ed. Sparks), x., 196; "Papers Relating to a Settlement by Z. Cox," 1797.

[2] Annals of Congress, March 30, 1796; Haywood's "Tennessee," 455, 456; Claiborne's "Mississippi," i., 156, 157; "State Papers, Miscellaneous," i., 358, 361; "Public Lands," i., 244 (reservation for canals); Cox's "Estimate of Commercial Advantages by Way of the Mississippi and Mobile Rivers, to the Western Country." Nashville, 1799.

[3] See Chappell's "Miscellanies of Georgia," ii., 43–55.

grant of western territory. The first proposal came November 12, 1794, from John Wereat, agent for Albert Gallatin, A. J. Dallas, and Jared Ingersoll, who offered to buy the tract formerly given the South Carolina Company at the price which that company was to have paid. In this Wereat probably exceeded his instructions; certainly his principals disclaimed all further connection with his proposals.[1] Wereat's offer was small, however, compared with those which soon followed. Petitions were received from four companies asking for a grant of the greater part of the State's western territory for the sum of $500,000. These were referred to a committee, which on the 3d of December brought in a bill embodying the companies' proposals. Another proposition from Wereat was rejected,[2] as were all other amendments, and the bill went to Governor Matthews for signature. In spite of a strong appeal from those interested, the bill was vetoed. The Governor did not consider the bill unconstitutional; he doubted whether the time had arrived for disposing of the territory, and thought that, if it was the proper time, the principle of monopoly was bad, the price was too low, and sufficient reservations had not been made for the State and its citizens. A bill framed to meet these objections was then introduced. Again Wereat appeared and outbid the other companies, and again his offers were refused.[3] The legislature hurried the bill through, the

[1] "A Vindication of the Rights of the New England Mississippi Land Company, by the Agents of Said Company" (Washington, 1804), 63, quoting Journal of the Georgia House, p. 10. All the original records of the proceedings in the legislature have disappeared.

[2] *Ibid.*, 65, 66. He was associated with William Few, General Twiggs, and others, in the Georgia Union Company.

[3] The refusal of Wereat's offers has generally been considered a crowning proof of the corruption of the legislature. It should, however, be said that his security was thought insufficient, and the whole plan regarded as really a scheme on his part to pay down a fraction of a cent an acre for the chance to sell at a profit in the course of a year. The fact that each of his later proposals was made after the arrangements of the others were well advanced gives color to the suspicion that his real design was to force the other companies to buy him off. Compare the "New England Vindication," 66, 71, and "State of Facts. Shewing the Right of Certain Companies to the Lands lately Purchased by Them from the State of Georgia" (United States, 1795), 32 ff.

Governor yielded, and the bill became a law January 7, 1795.[1]

By this act the greater part of what is now Alabama and Mississippi was sold for a cent and a half an acre to four sets of purchasers. The lands of the Upper Mississippi Company lay in the extreme northwest, stretching southward twenty-five miles from the State boundary line and eastward from the Mississippi to the Tennessee. The price was $35,000. For the sum of $60,000 the Tennessee Company obtained almost the same territory as in 1789. The southwest was the region of the Georgia Mississippi Company, which paid $155,000 for a grant bounded by the Mississippi, the Tombigbee, and latitudes 32° 40′ and 31° 18′. The largest share fell to the Georgia Company. Its seventeen million acres reached from the Mississippi to the Alabama, with 34° as the northern limit and 32° 40′ as the southern, except east of the Tombigbee, where it dipped to 31°. For this they were to pay $250,000. In each case a part of the purchase money (generally one-fifth) was to be deposited before the passage of the act. Payment of the remainder was required before November 1, 1795, and was to be secured by a mortgage on the land. Two million acres were reserved for other citizens of Georgia. Their subscriptions entitled them to membership in one or other of the companies, and their payments counted as part of the companies' purchase money. The State gave no guarantee against other claims, and was not to be responsible for peace with the Indians. After the completion of certain negotiations south of the Oconee the companies could apply for the concurrence of the United States in extinguishing the Indian title to their lands, and within five years after this extinguishment must form settlements, a provision which indicates the speculative character of the transaction. The

[1] "State of Facts," 51–64; "Public Lands," i., 144, 156, 157; Stevens's "History of Georgia," ii., 467 ff. Governor Matthews's conduct in signing the bill has been the subject of some discussion. It has generally been thought due to weakness rather than to corruption. See White's "Yazoo Fraud" (1852), 19; White's "Statistics of Georgia," 50; Chappell's "Miscellanies," ii., 87; Hodgson's "Cradle of the Confederacy," 88.

lands were declared free from taxation until their inhabitants should be represented in the legislature. Sale to any foreign power was prohibited.[1]

One of the noticeable features of the speculation is the number of eminent men who were engaged in it. James Gunn, the leading member of the Georgia Company, represented Georgia in the United States Senate. Matthew McAllister, his associate, was federal attorney for the Georgia district. Wade Hampton, grantee in two companies, was afterward a member of Congress and a general in the war of 1812, and at his death was supposed to be the wealthiest planter in the United States.[2] Other Congressmen were Robert Goodloe Harper and Thomas P. Carnes.[3] Nathaniel Pendleton, a federal judge, and William Stith, one of the judges of the Superior Courts of Georgia, were implicated.[4] Tennessee was represented by William Blount and John Sevier. Robert Morris was concerned.[5] James Wilson, of the Supreme Court of the United States, held shares to the amount of at least one million acres, and, it is asserted, was influential in securing the grant.[6]

[1] Act in "Public Lands," i., 152; "Indian Affairs," i., 552; Watkins's "Digest," 557.

[2] For an attempt to extenuate his conduct in the matter, see the *Charleston City Gazette*, May, 1810, and compare his letter in "Public Lands," i., 197. Further mention of his connection with the lands in Thomas's "Recollections of the Last Sixty-five Years," i., 60; Gallatin's "Writings," i., 178.

[3] See lists of the shareholders, "Public Lands," i., 141, 143, 220–246. For Harper, see also his speech in the House, Annals of Congress, March 20, 1798.

[4] Hamilton's "Works" (ed. Lodge), viii., 372; "State Papers, Finance," iii., 282; "Public Lands," i., 148; Chappell's "Miscellanies," ii., 95.

[5] "Account of the Property of Robert Morris," 20, 54; Henry MSS.

[6] "Public Lands," i., 141, 237; ii., 884; White's "Statistics of Georgia," 50; Chappell, ii., 93, 94. The following letter throws some light on the history of the sale: "It would seem as if the fortunate adventurers, were gluted with Lands & wealth, we are told of other presents, tho' to a greater Amount of Lands—sold for 12,000 & 13,000 dollars clear profit,—so much given away.

"There were immense Sums sent there for Speculation we hear of one Gent[n] buying up 4 or 5 Million of Acres, & of a few others a million each. . . . Gunn, Pendleton & Cox, (all with money of their own) with a few associates, have done the business Judge Wilson & others the money." Francis Watkins to Patrick Henry, March 7, 1795, Henry MSS.

THE RESCINDING ACT OF 1796.

The announcement of the sale produced great indignation and excitement throughout the State. It was felt that the legislature had given away a quantity of the public property sufficient, if properly administered, to yield a large sum to the State and furnish lands in abundance to all the citizens. Many of the purchasers were notorious speculators, many were residents of other States. Worse than all, many were members of the legislature which made the sale. "A more flagrant case of wholesale legislative corruption had never been known."[1] With but one exception, every member who voted for the act was a shareholder in one or more of the companies.[2] "Georgia became a perilous residence for all concerned in the speculation." Gunn was in several places burned in effigy. Threats of violence were frequent. Even before the bill was signed Governor Matthews had received a remonstrance from William H. Crawford and other citizens of Columbia County. Now came a succession of newspaper attacks, of petitions, of presentments of grand juries.[3]

After the adjournment of the "Yazoo Legislature," the first representative body to meet was the constitutional convention which came together in May, 1795. In consequence of the strong popular feeling that this body ought to abrogate the sale, many memorials were sent in. The convention, however, had been elected at the same time with the preceding legislature and was dominated by the same interests. Influenced by this and possibly doubting its power to take any action, the convention merely ordered "that such petitions be preserved by the Secretary, and laid before the next Legislature at their ensuing session," adding

[1] Adams's "John Randolph," 23.

[2] Compare the lists of shareholders with the votes in the legislature. "Public Lands," i., 141, 144; or Bioren and Duane's "Laws of the United States," i., 533–541. See also the affidavits in "Public Lands," i., 144–149.

[3] *Philadelphia Aurora*, March 30, 1795, and other newspapers of the time; White's "Yazoo Fraud," 21; White's "Statistics," 50, 51; Stevens, ii., 478–480; Chappell, ii., 114, 119–121; Gilmer's "Sketches of Some of the First Settlers of Upper Georgia," 196.

that this was "a subject of importance well meriting legislative deliberation."[1]

When the new legislature met, early in January, 1796, it was with the avowed purpose of repealing the obnoxious act. James Jackson had resigned his seat in the United States Senate and gone home to become a candidate for the Georgia House. As leader of the "Anti-Yazoo" party he had published a series of letters to the people, in which he attacked the constitutionality and policy of the sale.[2] Opposition to the sale had been the test in the elections, and on all sides "Anti-Yazoo" men had been chosen. On the 15th of January, the House appointed a committee of nine, with Jackson as chairman, to examine and report concerning the validity of the grant. A week later the committee reported a bill, together with proofs of corruption which were ordered to be entered in the journal of the House. February 13, the bill became a law.[3]

The rescinding act is an interesting document. It sets forth that the act of 1795 was in direct contravention of that part of the State constitution which empowered the legislature to make all laws and ordinances which they should deem necessary and proper for the good of the State, which should not be repugnant to the constitution.[4] The good of the State had been disregarded by the waste of public resources and by the creation of great monopolies inimical to republican government. The constitution had been violated by not organizing the territory into counties with representation in the legislature and liability to taxation.[5] Power to alienate the public land had not been delegated by the constitution, and could be exercised only by the people

[1] "Journal of the Convention. . . . At least fifteen of the fifty-five members of the convention were shareholders in the purchase.

[2] "The Letters of Sicilius, to the Citizens of the State of Georgia, on the Constitutionality, the Policy, and the Legality of the Late Sale of Western Lands, in the State of Georgia." August, 1795.

[3] Newspapers of the time; "Public Lands," i., 144–149; Stevens, ii., 485–487.

[4] Article I., section 16.

[5] Article I., section 17, giving the legislature power to lay out new counties and assign them representatives.

through their representatives in convention. That the grant had been fraudulently obtained was proved by the evidence which the committee had collected. "Were the powers of one legislature over another to be questioned," the authority of this legislature had been strengthened by the action of the late convention in referring the matter to it and by the absence of a court, "if the dignity of the State would permit her entering one, for the trial of fraud and collusion of individuals, or to contest her sovereignty with them, whereby the remedy for so notorious an injury could be obtained." So much, fully three-fourths, is preamble. Although it shows unmistakable marks of Jackson's hand, it indicates the popular sentiment of the State and serves as an illustration of certain widespread political opinions. In the controversy which followed the repeal, the advocates of the act drew their arguments chiefly from this preamble. The law goes on to declare the sale of 1795 null and void and to provide for the destruction of all the public records relating to it and for the return of the purchase money. To prevent future frauds on individuals, the Governor was required to promulgate the law throughout the United States.[1]

Two days later the act of 1795 was publicly and solemnly burned by the State authorities, tradition says by means of "fire from heaven" drawn down by a sun-glass.[2] Not satisfied with this solemn destruction of documents, perhaps feeling some uncertainty as to the finality of the rescinding act, the constitutional convention of 1798 made the act a part of the constitution. The territory of the State was declared to be alienable to individuals or companies only by the consent of the free citizens, except where counties should first be laid off and Indian rights extinguished. By this section "the contemplated purchases of certain

[1] "Public Lands," i., 156; Watkins's "Digest," 557; Marbury and Crawford's "Digest," 573.

[2] Thomas's "Reminiscences of the Last Sixty-five Years," i., 59; newspapers of the time; Stevens, ii., 491–494; White's "Yazoo Fraud," 46; Marbury and Crawford's "Digest," 581.

companies of a considerable portion" of the public lands became "constitutionally void," and the next legislature was directed to make provision for repayment.[1]

A new method of granting land was soon adopted. The public domain was surveyed and divided into small lots of uniform size, which were marked, numbered, and mapped. The certificates were then returned to the Surveyor-General and thrown into a lottery wheel, from which they were distributed by lot to each citizen.[2]

THE NEW PURCHASERS.

The legislators of Georgia had done their best to undo the work of 1795, but the speculators were not to be so easily defeated. Many indeed took advantage of subsequent legislation to receive back their money,[3] but most of the others made haste to sell their lands outside of the State. Pamphlets setting forth the advantages of the lands and the title of the companies were prepared and circulated extensively through the Middle and Eastern States.[4] The territory of the Upper Mississippi Company was sold in South Carolina.[5] Agents of the other companies were sent to New England and opened an office in Boston, where they found a spirit of speculation highly favorable to their dealings. People flocked to them, excited by the higher prices asked each day. Purchases and sales followed fast. Buyers received only a general warranty; payment

[1] Article I., sections 23 and 24. Glascock and Gunn refused to sign the new constitution on account of these provisions. See Governor Jackson's message, January 10, 1799, in the *Georgia Gazette* of the 14th of February.

[2] The first land lottery was in 1803. See Clayton's "Compilation of the Laws of Georgia," 100; Chappell, ii., 25–27; Harden's "Troup," 188–193; Melish's "Travels," i., 41; Sumner's "Jackson," 176.

[3] Marbury and Crawford's "Digest," 581, 583; "Laws of 1812," 163; Harden's "Troup," 50. List of those repaid in "Public Lands," i., 150.

[4] "State of Facts. Shewing the Right of Certain Companies to the Lands lately Purchased by Them from the State of Georgia." United States, 1795.

"Grant to the Georgia Mississippi Company, the Constitution Thereof, and Extracts Relative to the Situation, Soil, Climate, and Navigation of the Western Territory of the State of Georgia." Augusta, 1795.

[5] "Public Lands," i., 218, 233, 252.

was partly in cash, chiefly in notes which the agents quickly disposed of. By February 24, 1796, when the probability of a repeal of the sale was announced in the Boston newspapers, large purchases had been made from the Georgia and Tennessee companies, while the Georgia Mississippi Company had on the very day of the passage of the rescinding act made a conveyance of eleven million acres for ten cents an acre. Many men of prominence became involved—Samuel Dexter, James Sullivan, H. G. Otis, Perez Morton, Gideon Granger. "On this ocean of speculation great multitudes of sober, industrious people launched the earnings of their whole lives." "Every class of men, even watch-makers, hair-dressers, and mechanics of all descriptions, eagerly ran after this deception." Boston alone sank over two million dollars.[1]

When the rescinding act was announced in Boston (March 12) it became the principal local topic of conversation and gave rise to a newspaper and pamphlet controversy which continued several years.[2] Undiscouraged, the purchasers organized and prepared to enforce their claims. Still the determined opposition of Georgia and the destruction of the

[1] La Rochefoucault's "Travels" (London, 1799), ii., 175–177; Dwight's "Travels," i., 221; "Public Lands," i., 210, 220–246; ii., 885; *Columbian Centinel*, February 24, 1796; "Report on the New England Mississippi Land Company," Senate Document No. 205, 23d Congress, first session.

[2] *Columbian Centinel, Independent Chronicle*, March, 1796.

Bishop, "Georgia Speculation Unveiled." Hartford, 1797.

Morse, "A Description of the Soil, Productions, Commercial, Agricultural, and Local Advantages of the Georgia Western Territory." Reprinted from the "American Gazeteer." Boston, 1797.

Anderson and Hobby, "The Contract for the Purchase of Western Territory, Made with the Legislature of Georgia, in the Year 1795; Considered with a Reference to the Subsequent Attempts of the State, to Impair its Obligation." Augusta, 1799.

Harper, "The Case of the Georgia Sales on the Mississippi Considered: with a Reference to Law Authorities and Public Acts; with an Appendix, etc." Philadelphia, 1799.

"A Vindication of the Rights of the New England Mississippi Land Company, by the Agents of Said Company." Washington, 1804.

"A Few Facts in Reply to the Agents of the Mississippi Land Company." 1804.

records of the sale made recovery difficult, and the lack of any return from the large investment had produced much distress,[1] when the transfer to the United States of Georgia's rights to the territory gave Congress power to compromise.

THE GEORGIA CESSION.

A copy of the act of 1795, sent to the President just after its passage, had been transmitted to Congress as an object of magnitude which might deeply affect the peace and welfare of the country. The message was considered at length in both Houses, but two bills brought in to protect the Indians against intruders failed.[2] A strict regulation of intercourse with the Indians was obtained from the next Congress,[3] and a report of the Attorney-General led to a long discussion over Georgia's title, ending, in 1798, in the passage of a law which authorized the appointment of commissioners to adjust the conflicting claims of the two governments and receive proposals of cession.[4] To this Georgia assented, appointing Governor Milledge and Senators Jackson and Baldwin as her commissioners,[5] while the United States was represented by Madison, Gallatin, and Levi Lincoln, members of the new Cabinet.[6] In April, 1802, articles of cession were agreed upon and ratified as reported.[7] Georgia ceded

[1] Fisher Ames's "Works," i., 215; La Rochefoucault, ii., 176; Dwight, i., 221.

[2] "Indian Affairs," i., 551, 558; Annals of Congress, February, 1795; Fisher Ames's "Works," i., 168; Washington's "Writings" (ed. Sparks), xi., 18; J. C. Hamilton's "History of the Republic," vi., 190. It was alleged that Gunn's decisive vote for the Jay treaty was obtained by a promise that the sale should not be investigated. *Boston Chronicle*, February 29, March 7, 1796; *Philadelphia Aurora*, March 8, 1796; Randolph's speech in the House, Annals of Congress, January 31, 1805.

[3] "Statutes at Large," i., 469.

[4] *Ibid.*, i., 549; "Public Lands," i., 34, 71, 79.

[5] "Georgia Laws of 1800," 16.

[6] Instead of Timothy Pickering, Oliver Wolcott, and Samuel Sitgreaves, whom Adams had appointed. "Public Lands," i., 92; Executive Journal of the Senate, January 5, 1802.

[7] "Public Lands," i., 125; "Georgia Laws, Extra Session of 1802," 3; Donaldson's "Public Domain," 80.

to the United States all her rights west of the Chattahoochee in return for a payment of $1,250,000 and a pledge to extinguish all Indian titles in Georgia. The new territory was in due time to be admitted as a State, and claims under Great Britain, Spain, and the Bourbon act of 1785 were confirmed in the case of actual settlers prior to the Spanish evacuation. For these liberal terms Georgia consented to the reservation of five million acres to settle other claims.

THE YAZOO CLAIMS.

By a law of 1800[1] the federal commissioners were also directed to inquire into and report upon the claims of individuals in the territory south of Tennessee, a task of difficulty and importance. Their report contains, besides documents on earlier British, Spanish, and Georgia grants, a mass of material on the Yazoo claims, as the claims based on the act of 1795 had come to be called. In the opinion of the commissioners the claimants' title could not be supported, yet, in view of the equitable considerations which most of them could plead and the great amount of litigation which would arise from the confusion of claims, a reasonable accommodation was declared expedient. Rejecting the purchasers' propositions to compromise at twenty-five cents an acre—or about $8,500,000, with interest from 1806—the commissioners recommended as the basis of settlement either the remnant of the five million acres reserved by the act of cession (after satisfying settlers' claims), or the option of receiving $2,500,000 in interest-bearing certificates or $5,000,000 in certificates without interest, to be shared among the companies in proportion to the purchase-money.[2]

This report reached the House, February 16, 1803, and after some modification became part of the act of March 3, the basis of the land system of the Mississippi Territory. By this the residue of the reserved five million acres was ap-

[1] "Statutes at Large," ii., 70.

[2] "Public Lands," i., 132–158.

propriated to the quieting of such of the Yazoo claims as Congress might see fit to provide for. No claims should be satisfied unless proper evidence was exhibited before a fixed date, and the commissioners were empowered to receive further propositions of compromise. In the course of the debate on the report the motion prevailed to hear the claimants of 1795 before the bar of the House. This their agents declined on the ground of insufficient preparation, but they agreed to accept, with certain amendments, the proposed terms of settlement. Although the point was often overlooked in later discussions, the act expressly disclaimed recognizing or in any way affecting the claimants' demands. It merely made possible a future agreement, and hence the debates upon it are of slight importance.[1]

JOHN RANDOLPH'S RESOLUTIONS.

When the real question of compensating the Yazoo purchasers came up, the claims met the determined resistance of John Randolph. Randolph had been in Georgia during the excitement which followed the grant of 1795, and had there become imbued with that spirit of violent opposition to the sale, and everything connected with it, which made him an "Anti-Yazoo" man for the rest of his life.[2] Then, too, he was a strict adherent of the doctrines of the Virginia school, and a denial of the validity of the rescinding act meant a denial of his most cherished theories of government. As for the claimants, they were to his mind as guilty as if they had been partners in the original fraud. Compromise was also odious because advocated by Madison, whose influence in the House, all the more dangerous in that he was a member of the Cabinet, threatened Randolph's leadership. "Least Virginian of all the prominent Virginians," Madison, in his support of the claims, was associated with the northern Democrats, and for the northern Democrats Randolph felt great contempt. In his opinion they cared

[1] "Statutes at Large," ii., 229; Annals of Congress, February, 1803; "Public Lands," i., 159.

[2] Garland's "Randolph," i., 67; Adams's "Randolph," 23.

nothing for the principles of true republicanism; they were spoilsmen, eager only for the loaves and fishes. In this he was not entirely wrong; certainly the Democrats of 1798 and the Democrats of 1804 could not long remain united, and the Yazoo question occasioned the first split.[1]

Early in 1804 there was introduced into the House and referred to the Committee of the Whole a bill authorizing the commissioners to settle the Yazoo claims according to what they should deem the best interests of the United States. February 20, Randolph, in order "to place the subject in such a point of light that every eye, however dim, might see distinctly its true merits," offered a set of eight resolutions. They declared that the Georgia legislature had never been empowered to alienate territory "but in a rightful manner, and for the public good"; that when the governors of any people had exercised their authority to the public detriment, it was the inalienable right of the people to revoke the authority thus abused; that the House had it in evidence that the Yazoo sale was corrupt; that the sale had been declared void by a subsequent legislature, acting within its undoubted rights, and violating no constitutional provision; that the claims had been recognized by no act of the United States; and therefore that no part of the reserved five million acres should be applied to satisfy any claims under the pretended act of 1795.[2]

"These resolutions," it has been well said, "covered the whole ground; they swept statements of fact, principles of law, theories of the Constitution, considerations of equity, like a flock of sheep into one fold to be sheared."[3] Both bill and resolutions came up in the Committee of the Whole on the 7th of March. After the failure of attempts to give Congress power to revise the commissioners' findings, Randolph

[1] Compare Henry Adams's "History of the United States," ii., 210, a work from which I have derived much assistance in studying the political history of the Yazoo claims.

[2] For this, as for most that follows, see the Annals of Congress under the various dates.

[3] Adams's "Randolph," 107.

moved an amendment to the bill, in order to test the question, and was defeated, 46 to 57. Varnum's attempt to postpone discussion of the resolutions then opened the debate. On the side of the northern Democrats there was an evident endeavor to suppress the resolutions. They had, they said, no right to consider them; any action upon them would be an interference with Georgia's sovereignty. Macon replied that such objections should have been made before the resolutions were referred to the committee, while Randolph expressed his contempt for the crocodile tears shed in the cause of State sovereignty, a principle which would certainly be violated by recognizing the claims. They need not, he threatened, try to get rid of the question by postponement; he meant to have the public learn, then or again, the sense of the House on the resolutions.[1]

Forced to rise, the committee obtained almost unanimous leave to sit again, and three days later the resolutions were taken up seriatim. A debate of some length followed, in which Rodney, John Randolph, and Thomas M. Randolph were opposed by Elliott and Lyon. Finally by a close vote the resolutions were postponed.[2] Randolph had, however, succeeded in preventing any action on the subject, and it disappeared for the remainder of the session.

"A YAZOO CABINET."

Early in the next session the claims came up re-enforced by a new set of memorials and petitions. A House bill which extended the time for recording evidences of title failed in the Senate, but the Committee of Claims made a favorable report on the petitions, recommending the appointment of three commissioners whose terms of compromise should be final.[3] January the 29th a resolution to this effect

[1] "A whining, coaxing, threatening, and personally abusive speech," it was called by Dr. Cutler. "Life, Journals, and Correspondence," ii., 169.

[2] At first Randolph and his supporters, by a majority of one, defeated a motion to postpone the first resolution. After the others had been deferred they secured the postponement of this also; his opponents now resisted the postponement of the first resolution, evidently desiring to suppress it.

[3] "Public Lands," i., 215.

was reported from the Committee of the Whole, and after ineffectual attempts to adjourn, the debate began.

Randolph set the tune in a long speech, a "fire and brimstone speech," Dr. Cutler called it.[1] Postmaster-General Granger had appeared as one of the agents of the New England Mississippi Company, an organization composed of purchasers from the Georgia Mississippi Company. This impropriety on the part of Granger drew Randolph into a vehement invective against him:

"His gigantic grasp embraces with one hand the shores of Lake Erie,[2] and stretches with the other to the Bay of Mobile. Millions of acres are easily digested by such stomachs. . . They buy and sell corruption in the gross, and a few millions, more or less, is hardly felt in the account. . . . When I see the agency that has been employed on this occasion, I must own that it fills me with apprehension and alarm. . . . Are heads of Executive Departments of the Government to be brought into this House, with all the influence and patronage attached to them, to extort from us, now, what was refused at the last session of Congress?"

Then, turning on the northern Democrats, he said:

"What is the spirit against which we now struggle, and which we have vainly endeavored to stifle? A monster generated by fraud, nursed in corruption, that in grim silence awaits its prey. It is the spirit of Federalism! That spirit which considers the many as made only for the few, which sees in Government nothing but a job, which is never so true to itself as when false to the nation! When I behold a certain party supporting and clinging to such a measure, almost to a man, I see only men faithful to their own principles; pursuing with steady step and untired zeal, the uniform tenor of their political life. But when I see associated with them, in firm compact, others who once rallied under the standard of opposite principles, I am filled with apprehension and concern. . . . If Congress shall determine to sanction this fraud upon the public, I trust in God we shall hear no more of the crimes and follies of the former administration. For one, I promise that my lips upon this subject shall be closed in eternal silence. I should disdain to prate about the petty larcenies of our predecessors after having given my sanction to this atrocious public robbery."

His confidence in the sufficiency of the legal argument had evidently weakened, for he said:

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[1] "Life," etc., ii., 182.

[2] In allusion to Granger's lands in the Western Reserve.

"The present case presents a monstrous anomaly, to which the ordinary and narrow maxims of municipal jurisprudence ought not, and cannot be applied. It is from great first principles, to which the patriots of Georgia so gloriously appealed, that we must look for aid in such extremity. . . . Attorneys and judges do not decide the fate of empires."

On the 31st the commissioners and claimants were defended by John G. Jackson, Madison's brother-in-law, in a long speech which was thought to show Madison's hand.[1] Randolph broke forth again, citing a supposed attempt of Granger to secure a vote for the claims by an offer of mail contracts. Granger wrote at once demanding an official investigation, and when this was not granted addressed a letter to the Speaker in which he explained at length his relations with the New England Company and denied solemnly any use of improper influence. Lyon of Kentucky, one of the Democrats who had broken away from Randolph, held several mail contracts and thus felt himself attacked over Granger's shoulders. He now rose to defend the Postmaster-General in a speech full of personal abuse, calling Randolph a jackal and a madman with the face of a monkey.[2]

So the debate dragged on, to the enjoyment of the Federalists, until February the 2d, when a vote was reached and the resolution of the committee adopted, 63 to 58. Varnum and Eustis voted with the majority. Randolph carried but two votes in New England, the Middle States divided, and in the South eighteen votes in favor of the committee's resolution indicated a considerable revolt from his leadership. Nevertheless, he was again successful in defeating all attempts to compromise the claims.

FAILURE OF THE CLAIMS IN CONGRESS.

In the next Congress the claimants applied to the Senate through Sumter of South Carolina and the reluctant John Quincy Adams, and after a long struggle in committee a bill was brought in which directed that after the execution of

[1] Adams's "History of the United States," ii., 215.

[2] On the debate compare Cutler's "Life," etc., ii., 182, 186 ff.

proper releases on the part of the claimants Congress should provide by law for sufficient indemnification.[1] After the death of its strongest opponent, James Jackson, the bill passed by a vote of 19 to 11. When it reached the House a motion to reject prevailed, 62 to 54, by a division which showed only 10 southern votes in favor of the bill. In the debate Randolph continued to magnify the importance of the subject. "This bill," he said, "may be called the Omega, the last letter of the political alphabet; but with me, it is the Alpha; it is the head of the divisions among the republican party; it is the secret and covert cause of the whole. This is the subject which has been shoved off from day to day, merely that we might get something from the other House, where its friends were more numerous. Yes, a union has been formed between Cape Ann and Marblehead, and the Rio del Norte, a union of the East and the West, . . . and the nation is sold. . . . The whole executive government has had a bias to the Yazoo interest ever since I have had a seat here. This is the original sin, which has created all the mischiefs which gentlemen pretend to throw on the impressment of our seamen, and God knows what; this is the cause of those mischiefs which existed years ago."

In December, 1807, the Democratic legislature of Massachusetts passed a resolution which directed the Governor to petition Congress with regard to the Yazoo claims, requesting an impartial investigation and an equitable compromise.[2] When Bacon presented Governor Sullivan's memorial to the House and moved that it be referred, an angry debate arose. The tone of the Georgia members was particularly violent. Bibb moved immediate rejection, while Troup, famous as Governor of the State at the time of the Cherokee troubles, was inclined to throw the petition under the table. Randolph's plea for harmonious rejection in order to prevent another schism in the party was met by Crowninshield's

[1] "Public Lands," i., 252; J. Q. Adams's "Diary," i., 381, 389–392, 404, 405, 408, 417, 418.

[2] Amory's "Life of James Sullivan," ii., 212.

denial of the existence of such a schism and Smilie's retort that there had been no schism until Randolph's defection in the session of 1805–1806. The member's sense of fairness prevailed, and the petition was referred, yeas 71, nays 37, only 6 northern members voting in the negative. The petition, however, quietly disappeared, along with one from sundry citizens of New York,[1] and when Joseph Story asked leave to appear before the House in behalf of the New England Mississippi Company, his request was refused by a large majority.[2] Another memorial of the New England Company was brought up in December, 1809, and by a close vote referred to the Committee of Claims, but in April, 1810, the committee was discharged by vote of the House from further consideration of the subject.[3]

In this long course of opposition to the Yazoo claims Randolph's chief political motive appears to have been hatred of Madison and the northern Democrats. He was provoked by the defection of the northern Democrats in 1804,[4] while they were further alienated by his attacks at the next session. It became a common saying at Washington that there was no being in nature that a Virginian hated so much as a New England Democrat.[5] Although Madison was at first no more committed to the policy of compromise than was Gallatin, Randolph's firm friend, yet by reason of his own private utterances[6] and Jackson's public defence of the claims he came to be considered a more decided advocate. The question soon passed the stage of rational argument and became a struggle for power between Madi-

[1] This also came up in the Senate. J. Q. Adams's "Diary," i., 513.

[2] February 12, 1808. Compare Lodge's "Cabot," 377.

[3] Story's "Story," i., 197; House Journal, April 9, 1810.

[4] Randolph considered the Yazoo question one of the principal causes of the failure of the impeachment of Judge Chase. Annals of Congress, March 29, 1806.

[5] Cutler's "Life," etc., ii., 189. An illustration of the feeling in Virginia against the claims is given in Tucker's "History of the United States," ii., 217.

[6] See the account of his conversation with Giles in J. Q. Adams's "Diary," i., 344.

son and Randolph.[1] Randolph, seconded by the *Philadelphia Aurora*, sought to brand Madison as a Yazoo man and thus destroy his influence among those with whom that term was a synonym for speculation and corruption. His aim became more manifest as the Presidential election of 1808 drew near. The old Democrats, he told Monroe when he pressed him to become a candidate for the Presidency, were determined not to have a Yazoo President if they could avoid it.[2] Even after the caucus had nominated Madison, Randolph and sixteen of his friends published a protest against the election of a man who had "forfeited his claim to public esteem by recommending a shameful bargain with the unprincipled speculators of the Yazoo companies, a dishonorable compact with fraud and corruption."[3] Such a policy could lead to no positive results. Randolph's resistance to the claims won him the public thanks of Georgia,[4] but his quarrelsome arrogance, nowhere else better exhibited, destroyed his political influence and left him the leader of a powerless faction persistent in its denunciation of Madison and Yazoo.[5]

FLETCHER *VS.* PECK.

The House might well discharge its committee; Chief Justice Marshall's decision had put an entirely new face on the matter. Little confident of securing justice at the hand of Congress, the claimants frequently requested that provision be made for a judicial determination.[6] This, they thought, required for its authorization a special act of legislation, since they were prevented by a law of 1807 from

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[1] Adams's "History of the United States," iii., 119. Compare the *Philadelphia Aurora*, November 11, 1805. On the undue prominence given the subject see G. W. Campbell's letter in the *Tennessee Gazette* of April 10, 1805.

[2] Randolph to Monroe, September 16, 1806. Adams's "Randolph," 203.

[3] *National Intelligencer*, March, 7, 1808; Hildreth, vi., 66.

[4] November 23, 1807. Clayton's "Compilation of the Laws of Georgia," 680; Harden's "Troup," 53; Miller's "Bench and Bar of Georgia," i., 363.

[5] Compare Randolph's speech in the House, March 13, 1806, in which he defines *quiddism*.

[6] "Public Lands," i., 203, 204, 205, 252, 253, 587.

entering upon the lands to try the title.[1] Forecasting the probable result of such a trial of the case, Randolph and his party preferred to keep the question on the old basis and shout "Yazoo" whenever the claims came up. Finally a feigned issue was arranged and a favorable decision obtained from the Circuit Court. In March, 1809, the case was argued in the Supreme Court of the United States by Luther Martin, John Quincy Adams, and Robert Goodloe Harper. A defect in the pleadings necessitated a reargument at the next term, when Adams's place was taken by Story, soon to decide similar cases upon the bench.[2]

March 16, 1810, Marshall rendered his opinion.[3] It affirmed the position taken by Alexander Hamilton as early of 1795,[4] namely, that the rescinding act impaired the obligation of contracts and was therefore contrary to the Constitution of the United States. A grant, whether public or

[1] "Statutes at Large," ii., 445. Compare Quincy's speech in the House, January 4, 1808.

[2] J. Q. Adams's "Diary," i., 543; Story's "Story," i., 195, 196; Goddard's "Luther Martin," 35.

[3] Fletcher *vs.* Peck, 6 Cranch, 87. On the reluctance of the court to decide the case see J. Q. Adams's "Diary," i., 546, and Justice Johnson's dissenting opinion.

[4] After referring to the clause of the Constitution which protects the obligation of contracts, Hamilton says: "Every grant from one to another, whether the grantor be a State or an individual, is virtually a contract that the grantee shall hold and enjoy the thing granted against the grantor, and his representatives." If then the title of the State was good when the grant was made, a revocation of the grant would be void, and "the courts of the United States, in cases within their jurisdiction, will be likely to pronounce it so." March 25, 1795, Morse's "Description of Georgia Western Territory," 24. Compare "Public Lands," ii., 882.

In the case of Derby *vs.* Blake in 1799, the Supreme Judicial Court of Massachusetts had decided against the validity of the rescinding act. Such is the statement of George Blake, one of the counsel, in "Public Lands.," ii., 886. The opinion of the court does not appear in the record of the case in the Supreme Judicial Court or among the papers of the Essex County Court of Common Pleas, from which it was appealed; probably there was no written opinion, as the case was decided at *nisi prius* and did not go up to the full bench on any exception. The suit concerned the validity of a promissory note given by William Judd and James A. Wells for a share in the grant of 1795. The case is cited in 2 Dane's Abridgment, 649, in regard to another and wholly incidental point.

private, is an executed contract. Where an act clothed with the requisite forms of a law is passed by a legislature acting within its constitutional powers, a court cannot sustain in a suit between individuals the allegation of fraud in its passage. The people can act only through their agents, and when, as here, the agents act within the powers conferred, their acts are the acts of the people. Even if a court had examined the title and set it aside on account of fraud, it could not make innocent third parties suffer by the decision.

Such, very briefly, is the substance of one of the most important constitutional decisions in our history, important since the doctrine here laid down and afterward extended has largely determined the relation of the States to the corporations which they have created. It seems clear that Fletcher *vs.* Peck, rather than the more famous Dartmouth College case, lies at the root of the later interpretation of the law of public contracts. The decisive step was taken when a provision designed to guard private contracts was extended to those of a public nature. If a grant of lands is a contract, such by an easy transition is a grant of exemption from taxation,[1] and such again is a charter of incorporation.[2] This view is strengthened by the language of the later decisions. New Jersey *vs.* Wilson is distinctly based on the Yazoo case. Webster in his celebrated argument in the Dartmouth College case cites with assurance these cases and Terrett *vs.* Taylor,[3] in which Story had reaffirmed the principle of 1810. While Marshall's opinion in the Dartmouth College case rests on other grounds, nothing could be stronger on this point than Justice Washington's assertion that "if a doubt could exist that a grant is a contract, the point was decided in the case of Fletcher *vs.* Peck," or than Story's reasoning, when he says, after citing Fletcher *vs.* Peck: "It determines, in the most unequivocal manner, that the grant of a State is a contract, within the clause of

[1] New Jersey *vs.* Wilson (1812), 7 Cranch, 164.
[2] Dartmouth College *vs.* Woodward (1819), 4 Wheaton, 518.
[3] 9 Cranch, 43.

the constitution now in question, and that it implies a contract not to reassume the rights granted; *a fortiori*, the doctrine applies to a charter or grant from the king."

Carried to its logical conclusion, the principle of the inviolability of State contracts must come into conflict with the principle of eminent domain, a consequence clearly foreseen by Justice Johnson in dissenting from the opinion in Fletcher *vs.* Peck. To limit the obligation of contracts by the theory of eminent domain, says Henry Adams, "is merely John Randolph's proposition under another form; it is state sovereignty, to which we must come at last."[1]

THE COMPROMISE OF 1814.

Marshall's decision was not rendered without a protest from the champions of States' rights. April 17, 1810, Randolph attempted in vain to get the sense of the House on the subject, evidently with a view to resisting the decision. He desired some action, fearing that "an abandonment on the part of the House of an examination of that question, particularly at the time when it was abandoned, would wear the appearance abroad of acquiescence in that judicial decision on their part." Troup said that it was "a decision which the mind of every man attached to Republican principles must revolt at." More of such assertion was heard in 1813, when the House laid on the table a Senate proposal of compromise.[2]

Early in 1814 the New England Mississippi Company submitted a new memorial,[3] and again a bill for settling the claims passed the Senate by a large majority. The advocates of compromise now rested their arguments, not so much upon the equity of such a measure, as upon the litigation which must otherwise ensue, delaying the settlement of the territory and working hardship to many of its occupants. The passage of the bill by the House, finally

[1] "John Randolph," 109. See also Alexander Johnston on the Yazoo Frauds in Lalor's "Cyclopædia of Political Science," iii., 1127–1130.

[2] See especially Troup's speech, January 20, 1813.

[3] "Public Lands," ii., 877.

accomplished by a vote of 84 to 76, was facilitated by the absence of Randolph, who had been defeated at the last election, and the disposition to conciliate disaffected New England.[1] The act of March 31, 1814,[2] appropriated $5,000,000 from the proceeds of land sales in the territory, to be shared among the companies in the following proportion: Upper Mississippi Company, $350,000; Tennessee Company, $600,000; Georgia Mississippi Company, $1,550,000; Georgia Company, $2,250,000; citizens' rights, including such shares as had accrued to the United States through the operation of law, $250,000. Commissioners were appointed to decide all cases finally and after proper releases had been executed, to divide these amounts *pro rata* among the claimants. Nothing was to be paid to those who had voluntarily surrendered the evidences of their claims or received back any of the purchase money, and all who rejected these terms were forever barred from pursuing their claims.

The commissioners designated by the act, Monroe, Dallas, and Rush, were on petition relieved, and Thomas Swann, Francis S. Key, and John Law were appointed in their stead.[3] Their tedious task was begun in 1815, and three years later the Treasury reported a final settlement which involved the payment of $4,282,151.12.[4] Owing to the

[1] Hildreth, vi., 464; Henry Adams, vii., 402. On the passage of the bill compare Webster's "Private Correspondence," i., 244.

[2] "Statutes at Large," iii., 116. Later amendments, *ibid.*, iii., 192, 235, 294.

[3] "Statutes at Large," iii., 192; "Public Lands," ii., 897.

[4] "State Papers, Finance," iii., 281. List of rejected claims in "Public Lands," iii., 549.

On account of failure to pay part of the purchase money the members of the New England Mississippi Company were not allowed their full share of the compensation. Their appeal from the commissioners secured from Congress many favorable reports but no legislation, and was finally decided against them by the Court of Claims in 1864. See in particular Senate Document No. 205, 23d Congress, first session; Senate Document No. 212, 24th Congress, second session; 1 Mason, 191; 4 Wheaton, 255; 1 Court of Claims, 135; and consult under New England Mississippi Land Company, Poore's "Catalogue of Government Publications," and the House List of Private Claims (1850). For later claims under the Tennessee Company, see 2 Opinions of the Attorney General, 35; Reports of Committees, No. 236, 22d Congress, first session.

delay of Congress in providing for a settlement of the claims, much of this amount went, not to the defrauded claimants, but to those who had purchased from them at a discount. Thus were secured but imperfectly the benefits of a compromise probably just and unquestionably expedient.

THE LOST COLONY OF ROANOKE: ITS FATE AND SURVIVAL

THE LOST COLONY OF ROANOKE: ITS FATE AND SURVIVAL.

By Professor STEPHEN B. WEEKS, Ph.D., Trinity College, North Carolina.

The English race has had three homes. Old England was to be found amid the primitive forests of Germany; Middle England is Britain; New England is America. We revere the region which nourished our ancestors during the childhood of the race and developed in them the qualities of bravery, purity, and patriotism. No spot in Britain, remarks the historian of the English people, can be so sacred to Englishmen as that which first felt the tread of English feet; and to Americans no spot should be so sacred as Roanoke Island in Dare County, North Carolina, within sight and sound of the stormy Atlantic, where the first English settlement in the new world was made. Here landed in 1585 the first forerunners of the English-speaking millions now in America; here was turned the first spade of earth to receive English seed; here the first English house was built; and here on the 18th of August, 1587, Virginia Dare, the first of Anglo-Americans, was born.

The coast of the present State of North Carolina was seen for the first time by Sebastian Cabot during his voyage of 1498. On this voyage Cabot touched Newfoundland, and, keeping the land on his right, coasted as far south as the latitude of Gibraltar, which brought him to Albemarle Sound in North Carolina. At this point he was forced by lack of provisions to return. In his voyage the next year it is probable that Cabot went over the same course and extended his explorations southward until he came in contact

with the Spaniards,[1] but no definite account of these voyages has been preserved.

The first time, perhaps, that the coast of North Carolina was touched by Europeans was on March 10, O. S., 1524. On that day Giovanni Verrazano, a Florentine in the service of Francis I. of France, landed on the coast a little north of the mouth of Cape Fear river. His stay in this place was short, but advancing farther north, he landed again in 34°. He found the whole shore "covered with fine sand about fifteen feet deep, rising in the form of little hills about fifty paces broad. Ascending farther, we found several arms of the sea which, entering through inlets, washed the shore on each side as the coast trends. An extensive country appears, rising somewhat above the level of the sandy beach in beautiful fields and broad plains, covered with immense forests, more or less dense, the foliage of the trees being of various colors, too attractive and charming to be described. I do not believe that these are like the Hercynian forest, or the rough solitudes of Scythia, or the northern regions full of vines and trees, but growing with palms, laurels, cypresses, and other varieties of trees unknown in Europe, which exhale a very sweet fragrance a great distance. . . . The country abounds with many animals as deer, stags, hares, and the like. . . . The air is salubrious, pure, and of a temperature neither hot nor cold."[2] Verrazano continued to coast to the north; near Roanoke one of his sailors swam on shore to carry presents to the natives, and in this way was North Carolina made known to the Old World. No one can read the description of Verrazano without being

[1] Peschel, "Geschichte des Zeitalters der Entdeckungen" (ed. 1877), p. 217.

[2] Quoted in Weise: "Discoveries of America to 1525," p. 302, *seq.* The authenticity of the letter to Francis I. in which Verrazano gives an account of his explorations and discoveries has been attacked by Buckingham Smith, who says the coasts of Carolina were first visited by Esteban Gomez, one of the pilots of Magellan, in 1525. Henry C. Murphy also declares for Gomez in "The Voyage of Verrazzano," but James Carson Brevoort in his "Verrazano the Navigator," and Dr. B. F. De Costa in his "Verrazano the Explorer," maintain the authenticity of the letter. A summary of the arguments *pro* and *con* will be found in the "Narrative and Critical History of America," iv., chap. i.

impressed with its striking resemblance to the account given of the same country sixty years later by Amadas and Barlowe.

On the basis of the discoveries of Verrazano, France set up a claim to the country. She was destined to substantiate these claims by actual settlements. In February, 1562, a colony of French Huguenots sailed for America under the patronage of the Admiral de Coligny. They were commanded by Jean Ribaut of Dieppe, a brave mariner and a firm Protestant. They established themselves near Port Royal, in South Carolina, and named their fort Charles in honor of the weak, bigoted, and cruel Charles IX. of France. This colony returned to France the next year. In 1564 a second colony set out under Laudonnière, and fixed their new home on St. John's river, near St. Augustine.[1] These immigrants were massacred by the Spaniards in 1565, "not as Frenchmen but as Lutherans," [2] and French efforts to secure a foothold in the southeast of the United States ceased. The grant made by Charles I. to Sir Robert Heath in 1629 included all the Atlantic coast between 31° and 36° and thus shut out the French from the seaboard, but even as late as 1655 they laid claims to all the country between the Altamaha and the Cape Fear rivers, extending indefinitely westward.

The explorers of 1584 also learned from the Indians that Europeans had been on the coast from time to time. These were probably Spaniards, and came, according to Lane's conjecture, to trade for the white pearl. Barlowe tell us

[1] It has been claimed that the name "Carolina" came from these two settlements, but such is not the case. The fort built in 1564 was also named "Caroline." "Voila en brief la description de nostre forteresse, que je nommay la Caroline, en l'honneur de nostre prince le roy Charles" (*cf.* Laudonnière's account of the second voyage made to Florida in Basanier's "Histoire notable de la Floride," p. 86, ed. 1853); but nowhere is this name applied to the country. In the third voyage the country is called New France and by this title it continued to be known: "Voyla en bref le descours de tout ce qui est advenu en la Nouvelle France, depuis qu'il pleust à la majesté du Roy d'y envoyer ses subjects pour y descouvrir les terres" (*ibid.*, p. 205). On this subject *cf.* also the "Narrative and Critical History of America," v., 286, note.

[2] Bancroft, "History of the United States," last ed., i., 57.

that a European vessel was lost on the coast some years before their coming, and all the crew perished. The natives secured some nails and spikes from the wreck and used them in making their best instruments. Some survivors from another wrecked ship lived for awhile with the natives, and Barlowe saw among them children with "very fine auburn and chestnut-colored hair." This indicates that there had been, for a time at least, some intercourse with white men.

THE PATENT TO RALEGH AND THE FIRST VOYAGE OF THE ENGLISH.

In 1584 Queen Elizabeth granted a patent to Sir Walter Ralegh "to discover, search, find out, and view such remote heathen and barbarous lands, countries and territories not actually possessed of any Christian prince, nor inhabited by Christian people, as to him, his heirs, and assigns, and to every or any of them shall seem good." He was granted "all prerogatives, commodities, jurisdictions, royalties, privileges, franchises, and pre-eminences" belonging thereto. He was given power "to correct, punish, pardon, govern," all persons settling within two hundred leagues of any place colonized by him within six years. He was accountable to the Queen alone, and had power to make any laws not contrary to those of England and the Established Church. The settlers were granted "all the privileges of free denizens, and persons native of England, and within our allegiance in such like ample manner and form as if they were born and personally resident within our said realm of England, any law, custom or usage to the contrary notwithstanding."[1]

Under this broad and comprehensive patent Ralegh fitted out two small vessels. He put them under the command of Philip Amadas and Arthur Barlowe. They sailed from

[1] The patent of Elizabeth can be found in Hawks's "History of North Carolina," i., 11, *seq.*, reprinted from Hakluyt, iii., 243, ed. 1598–1600; also in Hazard's "Historical Collections," i., 33, and in Poore's "Charters and Constitutions," ii., 1379.

the west of England, April 27, 1584.[1] Ralegh did not accompany the fleet, for Barlowe's narrative is addressed to him; nor did he ever visit Virginia. The fleet sailed by way of the West Indies, which was the usual route. They coasted up the gulf stream, and on July 2 found shoal water "where we smelled so sweet and strong a smell as if we had been in the midst of some delicate garden abounding in all kinds of odoriferous flowers." They arrived on the coast on the 4th, and sailed along it 120 miles before finding an inlet. They entered the first they saw.[2]

The explorers landed on the North Carolina coast on the fourth day of July, O.S., 1584.[3] They found the land low and sandy, "but so full of grapes as the very beating and surge of the sea overflowed them." At the discharge of a harquebus a flock of cranes arose with such a cry as if an army of men had shouted together. They discovered

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[1] Barlowe's narrative in Hawks, i., 69–88.

[2] This was not Ocracoke Inlet, as Mr. Bancroft states in his "History of the United States" (last edition, i., 69), for Ocracoke Inlet and Wocokon Island, on which he tells us they landed, is "four days' journey," or about eighty miles distant from Roanoke Island, while, as the explorers tell us, the inlet through which they really passed is only "seven leagues" from Roanoke. Mr. William L. Welch has examined the question in "An Account of the Cutting through of Hatteras Inlet," etc., and concludes (p. 10) that "they entered at 'Trinity Harbor' north of Roanoke Island, which inlet was about where 'Caffey' inlet used to be," and "that Wocokon, our Ocracoke, was to them an unknown place."

[3] In 1884 an effort was made by Senator Vance of North Carolina to secure a national recognition of the ter-centenary of the landing of the English. A bill was introduced into Congress providing that three Senators and five Representatives be appointed a committee "to prepare a design and arrange for the erection of a suitable monument or column at or near the spot where Raleigh's first expedition landed, on Roanoke Island, and to secure sufficient ground therefor, and to cause to be placed on said monument such inscriptions as will properly commemorate the event, and honor those who planned and executed it." Thirty thousand dollars was to be appropriated for this monument, and the corner-stone was to be laid on July 4, 1884, in the presence of the committee, the governors of Virginia, North Carolina, and South Carolina, with such other officers of the executive departments as the President might designate. This bill never became a law, and to-day the birthplace of the American people is practically inaccessible for nine months in the year, *unmarked and almost unknown.*

the land on which they were to be an island, some twenty miles long and not more than six broad. It had many goodly woods full of deer, conies, hares, and fowl, and the cedars were far better than "the cedars of the Azores, of the Indies or Lybanus." On the third day three of the natives approached the vessels. The Indians landed; one advanced, and some of the English went to meet him. They took him on board, gave him a shirt and a hat, and made him taste their meat and wine. He viewed their vessels and departed to his boat.

The next day Granganimeo, the brother of Wingina, the king, came to see them with forty or fifty of his men, "very handsome and goodly people, and in their behavior as mannerly and civil as any of Europe." The prince made great efforts to show his joy and to give the English a warm welcome. To their inquiries in regard to the name of the country, one of the savages who did not understand the question, answered "Wingandacoa," meaning, "you wear good clothes." This was misunderstood by the English, and given as the name of the country.

Later, Barlowe with seven men went twenty miles "into" the river Occam, and came to the island of Roanoke. At the north end was a village of nine houses, built of cedar and fortified with palisadoes. Granganimeo was not at home, but his wife came out to receive them. She carried them to her house and treated them "with all love and kindness, and with as much bounty (after their manner) as they could possibly devise." They found the people "most gentle, loving and faithful, void of all guile and treason, and such as live after the manner of the golden age."

The English remained in the country about two months, making friends with the Indians and exploring. No attempt was made toward a settlement. They reached England about the middle of September, bringing with them two of the natives, Manteo and Wanchese, who were destined to return to their native land, the former to become the faithful friend of the English, the latter their unrelenting enemy.

LANE MAKES A SETTLEMENT.

The matter of planting a colony in Virginia could not long remain neglected; Ralegh's charter had been drawn with a design to foster colonization; Englishmen looked in wonder upon the natives of this strange land beyond the seas; they were enthused by the glowing accounts of the new country, of its wealth, health, productiveness, and people; Ralegh named it Virginia[1] in honor of the Virgin Queen, and adventurers were easily gathered for a new expedition, which sailed from Plymouth, April 9, 1585. It was composed of seven vessels and was under the command of Sir Richard Grenville, the cousin of Ralegh. There were more than a hundred persons on board. They were furnished with all necessary provi-

[1] Virginia was the general name given to the territory claimed by the English. These claims were based on the discoveries of the Cabots, the explorations under the direction of Ralegh, and permanent settlements. In 1629, under the grant made by Charles I. to Sir Robert Heath, the territory between 31° and 36° was erected into a separate province and called Carolana, in honor of the ruling king of England, while the term Carolina was used in a more restricted sense and corresponded roughly to the present territory bearing that name. ("*Carolana* and *Carolina* are two distinct tho' bordering Provinces, the east of *Carolana* joyning to the west of *Carolina*."—Coxe's "Carolana.") The terms of the patent of Heath were never fulfilled, and on March 20, 1663, Charles II. granted the same stretch of territory to the eight Lords Proprietors. It was erected into a province and called Carolina. By the terms of a third charter given in 1665, the boundaries were extended half a degree on the north, and two degrees on the south.

The term North Carolina originally meant only that strip of territory between 36° and 36°-30′, which was thus transferred to the Lords Proprietors from Virginia. The settlements in this section were known as Albemarle, and this term indicated the same territory as North Carolina; but in 1689 the governor of the colony ceased to be called Governor of Albemarle, and was styled Governor or Deputy Governor of North Carolina. The name Carolina was used to denote all the territory included within the charter of 1663. Gradually the name North Carolina travelled toward the south, and came to embrace all the country to the north and east of Cape Fear river. In 1719 the governments of North Carolina and South Carolina were made entirely distinct by the revolt of the latter colony from the authority of the Proprietors; since that time the names have conformed to present usage.—("Colonial Record of North Carolina," i., pref. xxiii., xxiv.)

sions and were intended as permanent settlers. Its governor was Ralph Lane, son of Sir Ralph Lane, Knight of Orlinbury. He was born in 1540, and his mother was Maude Parre, the cousin of Catherine Parre. Young Ralph entered the service of the Queen in 1563, and about January, 1584, was made governor of Kerry and Clanmorris in Ireland. His residence in Ireland and Ralegh's interests there will account for the number of Irish names which appear among the colonists. He was made governor of the American colony as early as February, 1585. His subsequent career is one of distinguished honor. In 1587 he was member of a council of war called to concert measures against the threatened Armada, and was knighted in 1593 for gallantry.

The fleet carried a galaxy of men whose names were to become famous in the annals of American history. There were, besides Grenville and Lane, Thomas Cavendish, the soldier and explorer; Thomas Hariot, the mathematician and naturalist; John White, the artist and future governor; Philip Amadas, the admiral of the former expedition, and now designated as deputy to Lane, together with Manteo and Wanchese the natives. They sailed via the Canaries and West Indies. On June 23 they were in great danger of suffering wreck on a "breach called the Cape of Fear"; June 26 they arrived at Wocokon. Grenville, with Lane, Hariot, and others, explored the main as far as Secotan and were entertained by the savages. In a moment of angry haste Grenville burned and spoiled the corn of the Indians at Aquascogoc for the theft of a silver cup, thus sowing the seeds of an animosity that was to bear its evil fruit in the near future. Grenville planted a colony at Roanoke Island under the command of Lane and set sail for England, August 25. He had had trouble with Lane on the outward voyage; Lane became convinced that no good was intended him [1] and this perhaps hastened his abandonment of the undertaking. Grenville revisited Virginia in 1586 only to find it swept

[1] *Cf.* the letter of Lane written to Sir Francis Walsingham, Sept. 8, 1585, and printed in "Archæologia Americana," vol. iv., p. 13, *seq.*

and garnished. He fell in 1591 while fighting the Spaniards off the Azores.

The fortunes of the colony after the departure of Grenville have been preserved by Hakluyt.[1] The story is from the pen of Ralph Lane himself and was sent to Hakluyt from "the new fort in Virginia." Their impression of the new country was very favorable, for Lane says, "we have discovered the main to be the goodliest soil under the cope of heaven," and again, "if Virginia had but houses and kine in some reasonable proportion, I dare assure myself, being inhabited with English no realm in christendom were comparable to it." The time of the colonists was spent principally in exploration. This was not inconsiderable in amount, although they labored under grave difficulties. Their pinnace drew too deep water for the sound and "would not stir for an oar"; they had besides the pinnace only a small boat with four oars. This could not carry above fifteen men with their furniture, baggage, and victuals for seven days at most. But, beginning at Croatan, they passed along the eastern coast of the State, visiting parts of the present counties of Carteret, Craven, Jones, Beaufort, Hyde, Dare, and all the counties north of Albemarle Sound. They went up the Chowan to the junction of the Meherrin and Nottoway rivers. They went 130 miles northward from Roanoke Island through Currituck Sound and then journeyed fifteen miles inland to the country of the "Chesapeans," not far from the site of the city of Norfolk. They explored the great river Roanoke, called by the natives Moratoc; they ascended it for 110 miles, going, perhaps, into the present county of Warren. On this journey they had to fight hostile natives and the wolf of hunger. They called a council, a return was proposed, but these brave fellows decided to keep on "while there was left one half pint of corn for a man." It came to the worst on the return trip and for four days they lived on dog meat and sassafras leaves. Such was the earnestness of purpose, the steadiness of aim, and unflinching determination shown by the earliest explorers of our waters.

[1] In Hawks's "History of North Carolina," vol. i., pp. 103–145.

The Indians of Roanoke soon began to give trouble. Granganimeo had died soon after Lane's arrival. Wingina thereupon changed his name to Pemisapan, and the party hostile to the English came into the ascendant at his court. They plotted to starve the English by running away and leaving their grounds in the island unsown. Had this been done the colonists must have starved, "for at that time we had no weirs for fish, neither could our men skill of the making of them, neither had we one grain of corn for seed to put into the ground." This plot was frustrated by Ensinore, the father of the king, and the only friend of the English at court. Ensinore died in April, 1586. Pemisapan now formed a coalition of the tribes to the north against the English. He determined to conquer on the Roman plan,—by dividing the forces of his enemies. To this end the Indians refused to sell the English any corn whatever, while others went by night to rob and break down their weirs. Lane was forced to send twenty men to Croatan and ten to Hatteras to live on fish and to look out for a sail; sixteen or twenty more were sent every week to the main to live on "casada" and oysters. June 10 was the day fixed by the savages for a general massacre. The plot was betrayed by Skyco, an Indian prince whom Lane had kept as a hostage, and had treated with great kindness. The English acted at once; they sent word to the savages that they desired an audience, came upon them suddenly on the mainland, and put Pemisapan with his chief conspirators to death.

The colonists, in the meantime, having given up all hope of help from England that year, had planted a bountiful crop, sufficient for two years; but June 9 Captain Stafford came up from Croatan with news that an English fleet of twenty-three sail was off the coast. He brought letters from Sir Francis Drake, who offered to supply the colonists with victuals, ammunition, and clothing, with barks, pinnaces, and such other boats as were necessary, to man and furnish them as Lane thought desirable. His generous offer was accepted. The *Francis*, a bark of seventy tons, was made ready, furnished with all necessaries, and two of his most experienced

masters were put on board. But at this time a fearful storm arose "in the road of our bad harbor," the fleet was scattered, and the *Francis* was forced to put to sea to escape wreck. She was seen no more until they reached England. The ships of the fleet were much damaged, but Drake gave Lane the refusal of a vessel of 170 tons, the only available one at his command. It was found that the draft of this vessel was too great to enter the harbor. Lane called a council. The prospects were gloomy; their company, originally 108 in number, had been somewhat weakened; the first bark given them by Drake, with the provisions, ammunition, masters, and some of the best colonists and sailors, had been carried to sea; Sir Richard Grenville had promised to visit them before Easter and had not yet arrived; the relations between England and Flanders were not encouraging;—under these circumstances they determined to return with Drake to England. They departed June 19, and reached Portsmouth July 27, 1586. Thus ended the first actual settlement of Englishmen in the New World.[1]

Soon after the departure of Lane another ship, fitted out by Ralegh for that purpose, and laden with all things necessary, arrived at Hatteras. They spent some time in seeking the colonists, but finding no one, returned. Two weeks after the departure of Ralegh's ship, Sir Richard Grenville arrived with three ships. He explored the country in a fruitless search. He was anxious to retain possession of it for England, and left fifteen men behind him on Roanoke Island. These men were seen no more by Europeans. White learned from the savages the next year that they had been either slain by hostile Indians or drowned while trying to coast in a small boat from Roanoke Island to Croatan.

HARIOT'S BRIEF AND TRUE REPORT.

The keenest observer in Lane's colony was Thomas Hariot, the mathematician. To him we are indebted for

[1] Bancroft, "History of the United States," i., 79.

an account of the soil and of its "natural inhabitants," as given in his report to Sir Walter Ralegh, which has been preserved by Hakluyt in his "Voyages," in an abridged form, and reprinted by Dr. Hawks.[1] Hariot begins with the "merchantable commodities," telling of silks native to the soil, of timber, oil, metals, furs, dye-stuffs, gums, of tar, rosin, pitch, and turpentine, which have since played so important a rôle in the economic history of the State. He found there a grape, indigenous to the soil, "of himself luscious sweet." This has been identified as the scuppernong, which is still growing in its old home, and has spread thence over the country. In the "pagatour" of the natives we easily recognize our Indian corn. "Englishmen call it Guinea-wheat or Turkey-wheat, according to the names of the countries from whence the like has been brought. The grain is about the bigness of our ordinary English pease, and not much different in form and shape; but of divers colors, some white, some red, some yellow, and some blue. All of them yield a very white and sweet flour, being used according to his kind, it makes a very good bread."

In Hariot's "openauk" we recognize our Irish potato. These "are a kind of roots of round form, some of the bigness of walnuts, some far greater, which are found in moist and marshy grounds, growing many together, one by another in ropes, as though they were fastened with a string. Being boiled or sodden, they are very good meat."[2]

We recognize another article from Hariot's description, called by the natives "uppowoc," by the Spaniards called tobacco. The natives esteemed uppowoc very highly; they dried the leaves, and smoked them, drawing the fumes through clay pipes "into their stomach and head, from whence it purges superfluous phlegm and other gross humors, and opens all the pores and passages of the body. . . . whereby their bodies are notably preserved in health, and know not many grievous diseases." They believed that

[1] "History of North Carolina," i., pp. 147–190.

[2] The Brazilians called the potato "openanc," which is evidently the same word.

their gods were "marvelously delighted" with uppowoc; they threw it into their fires for sacrifice; they cast it into the air and on the water in a storm, showing clearly that they peopled both elements with invisible beings. When they set a new weir, or when delivered from danger, they threw it into the air, and this was done with strange gestures, with clapping of hands, and with dancing.[1]

The "natural inhabitants" were clothed in loose mantles of deer-skins, with aprons of the same material around their middles. They had edge-tools, no weapons of iron or steel, and knew not how to make them. Their bows were made of witch-hazel, with arrows of reeds; for swords they used flat-edge truncheons about a yard long. Their shields were made of wicker-work fastened with threads. They were ordinarily gentle toward the white people, but had all the characteristic shrewdness and treachery of their race and waged fierce wars against one another, a favorite method being by surprises and ambuscades. Their towns were small, some of them having not more than thirty houses, and if defended at all only by a wall made from the bark of trees fastened to stakes. The chief ruler was called a *Weroance*, and the extent of his territory varied greatly. Their languages were much diversified, but had perhaps developed from a common stock.

These Indians were polytheistic; their gods were of different sorts and degrees of power. There was one chief deity who had been from all eternity. The gods were of human shape, and were represented by images called Kewas. These Kewasawak were placed in temples called Machicomuck, where they worshipped, prayed, sung, and sometimes offered sacrifice. They believed in the immortality of the soul, with a reward according to deeds. The good were

[1] Lane introduced tobacco into England on his return from this expedition. Ralegh was the first person of rank to use it, but Mr. Green is mistaken when he says in his "Short History of the English People" (chap. viii., § iv.) that "the introduction of tobacco and of the potato into Europe dates from Raleigh's discovery." Tobacco had been known on the continent for a generation at least.—*Cf.* Peschel, "Geschichte des Zeitalters der Entdeckungen."

carried to a place of perpetual happiness and bliss. The wicked were cast into the great hell-pit of fire called Popogusso. Hariot explained to them the contents of the Bible and its doctrine of salvation through Christ. He told them there was no virtue in the book itself, but that the power lay in the principles; still many were "glad to touch it, to embrace it, to kiss it, to hold it to their breasts and heads, and stroke all over their body with it, to show their hungry desire of that knowledge which was spoken of."

The Indians believed that woman was created first, and through her union with the gods came the human race. They thought the compass, the perspective glass, the loadstone, burning glasses, guns, writing materials, and clocks to be the work of gods rather than men. They believed the white people could kill them at any distance with invisible bullets, and all strange diseases, losses, or hurts were attributed to the colonists. As there were no women among these, and as they were seldom sick, it seemed as if they were not born of women, but were men of an older generation, who had arisen to immortality. "Some would likewise seem to prophecy that there were more of our generation yet to come and kill theirs, and take their places," and that this extermination had already begun.

THE COLONY UNDER WHITE.

In 1587 Sir Walter Ralegh, intending to persevere in planting his territory of Virginia, prepared a new colony. He appointed John White[1] governor, and gave him twelve assistants, whom he incorporated under the name of the "Governor and Assistants of the City of Ralegh in Vir-

[1] Governor White has been identified by Henry Stevens in his "Bibliotheca Americana," p. 222, and by Dr. John G. Kohl in his "Maps Relating to America Mentioned in Hakluyt," with that John White, or With, or Wyth, or Whit who accompanied Grenville on his expedition in 1585, and carried back illustrations in water-colors of the plants, birds, beasts, and natives, with their habits and modes of life. These were taken with beauty and exactness, says Bancroft, and were the means of encouraging an interest in Virginia by diffusin a knowledge of its productions.

ginia." The colonists sailed in three ships, May 8, 1587. They numbered 117 souls. Seventeen were women, ten of this number perhaps being with their husbands. Ralegh had learned from the experience of former fleets that the harbor of Roanoke was, as Lane had said, "very naught." He instructed them therefore to abandon the settlement on Roanoke, and to coast northward, to make the Chesapeake of which Lane had learned, and to fix their homes there.[1] This was not done. Governor White says it was due to the treachery of Simon Ferdinando, the pilot. This man was a Portuguese, who had settled in England. He sailed with Drake in 1577; he explored the coast of Maine in 1579–80[2]; he had been the pilot of Fenton's voyage in 1582–83; he had been on the expedition of Amadas and Barlowe in 1584; and was with Grenville in 1585. White says that he deserted their fly-boat in the bay of Portugal, that he loitered among the West Indies, that he deceived and lied to the colonists, and came near causing them shipwreck about Cape Fear; but Lane, in his letter to Walsingham of August 12, 1585, speaks of him in the highest terms, even considering him worthy to be commemorated in the inlet which was the "beste harborough of all the reste," since known as Hatteras,[3] and it is not probable that a long period of service would have been closed with an act of treachery.

The fleet reached the coast July 22. Governor White at once started to Roanoke, but as soon as the pinnace had pushed off from the ship, he tells us that the sailors in it were charged not to bring any of the planters back, but to leave them on the island. Three days later the rest of the planters arrived in the fly-boat. They speedily adjusted themselves to the new turn of affairs and prepared to remain on the island.

August 13, 1587, Manteo, the faithful friend of the English, was baptized and made Lord of Roanoke and Dasamonguepeuk, probably the only title of nobility ever given

[1] "Narrative of Fourth Voyage to Virginia," Hawks, i., 191–212.

[2] *New England Historical and Genealogical Register*, April, 1890.

[3] For this letter, *cf.* "Archæologia Americana," vol. iv., p. 9.

to a native of the New World, and the only one in North Carolina until the time of John Locke and his Fundamental Constitutions. August 18, Eleanor Dare, daughter of John White, the governor, and wife of Ananias Dare, one of the assistants, was delivered of a daughter, and because this child was the first born in the new settlement she was christened Virginia, the first of our race in the western hemisphere. She is remembered in the name of our most eastern county, whose capital is Manteo, on Roanoke Island.

At the earnest request of the colony it was decided that Governor White should return to England as factor to provide for the wants and needs of the settlers. He sailed August 27. From that time the fated colonists were never seen again by the eyes of civilized man, for the war for religious liberty was now coming on; Protestant England was struggling against Catholic Spain, and all the valor of Ralegh, Grenville, and Lane was needed by their royal mistress to meet the Invincible Armada. But even in the midst of these struggles Ralegh found means to send White to Virginia in 1588. He sailed from Biddeford, April 22, with two pinnaces. They carried fifteen planters and all "convenient provisions"; but one of his vessels met two men-of-war of Rochelle, about fifty leagues northeast of Madeira, and, after a bloody fight, was boarded and rifled. It returned to England within a month's time, and about three weeks later the other also returned.[1] Thus ended all efforts to succor the American colony in 1588, and in 1589 nothing seems to have been done.

The colony was neglected for the time, but in February, 1590 (1591), through the influence of Ralegh, White secured the release of three merchantmen bound for the West Indies, then detained by an embargo, on condition that they bear supplies and passengers to Virginia. These conditions were not fulfilled. White went out alone, unaccompanied by even a servant. The vessels sailed March 20, 1591, but the seamen thought more of plundering than planting. They cruised for some months in the Spanish main, took a num-

[1] Oldys, "Life of Raleigh," p. 81. The account of the fortunes of this expedition is related somewhat differently in Hakluyt, edition of 1589, p. 771.

ber of rich prizes, and reached Virginia in August. Here they encountered heavy gales, and lost seven of their best seamen in trying to reach Roanoke. At last a boat was anchored off the fort. They sounded a trumpet-call and many familiar English tunes, but received no answer. At daybreak they landed; as they stepped upon the sandy beach they saw carved in the very brow of a tree the "fair Roman letters, C. R. O." They advanced to the fort. The houses had been taken down, and the place had been inclosed with a palisado of great trees. They saw many bars of iron, two pigs of lead, iron fowlers, iron-locker shot, and similar heavy things scattered here and there and overgrown with grass. They found where some chests had been buried and then dug up again, their contents spoiled and scattered. White saw some of his own chests broken open, his books torn from their covers, his pictures and maps rotten from the rain, and his armor almost eaten through with rust. One of the principal trees, which was used as a post at the right side of the entrance to the fort, had the bark taken off, and five feet above the ground, in "fair capital letters, was graven CROATOAN."[1] No other memorials remained. The colonists had vanished. White returned to the ships, bidding a sad farewell to his colony, to his daughter, and his grandchild. The captain agreed to carry him to Croatan, but after delays pleaded shortness of supplies, and sailed to the West Indies. The colony left on Roanoke Island in 1587 was seen no more.[2]

We know nothing further of the history of John White,

[1] Martin ("History of North Carolina," i., 35) says "the stump of a live-oak, said to have been the tree on which this word [he should have said "the letters C. R. O."] was cut, was shown as late as the year 1778 by the people of Roanoke Island. It stood at the distance of about six yards from the shore of Shalon-bas-bay, on the land then owned by Daniel Baum. This bay is formed by Ballast-point and Baum's-point." English coins, a brass gun, a powder-horn, and a small quarter-deck gun made of iron staves, with iron hoops, were shown Lawson as relics.

[2] White says that this was his "fifth and last voyage to Virginia." He started there in 1588; he was there in 1587. He was with the expedition of 1585, and, although his name does not appear on the list of those "that remained one whole year in Virginia," was probably among them. It seems probable then that he was also with Amadas and Barlowe in 1584.

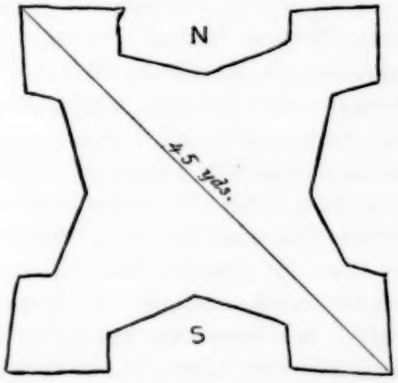
but still Ralegh did not despair. In 1602 Samuel Mace, of Weymouth, who had been in Virginia twice before, was employed by Ralegh "to find those people which were left there in 1587. To whose succor he hath sent five several times at his own charges." "At this last time, to avoid all excuse,"—for the former expeditions had accomplished nothing—Ralegh "bought a bark, and hired all the company for wages by the month: who departing from Weymouth in March last, 1602, fell forty leagues to the southwestward of Hatteras in 34 degrees or thereabout." They spent a month here, and pretended that extremity of weather and loss of tackle prevented them from entering Hatteras Inlet, to which they had been sent.[1] They accomplished nothing. In 1608 Capt. John Smith sent a woodman to the Chowan region to inquire for the lost colonists, but in vain. In 1610, an exploring expedition under Capt. Samuel Argall went from Virginia into parts of Chowanock among the Mangoags for the same purpose, but without success.[2]

We have no evidence that the "city of Ralegh" was visited by Europeans from the departure of White in 1591 until 1654, when Francis Yardley sent out a company of five from Virginia. The Indians of the island received them kindly, and "showed them the ruins of Sir Walter Raleigh's fort." In 1676 the site was purchased by a New Englander. A description of it, printed by Edward C. Bruce in *Harper's Magazine* for May, 1860, will serve as a sufficiently accurate account for this day. "The trench is clearly traceable in a square of about forty yards each way. Midway of one side . . . another trench, perhaps flanking the gateway, runs in some fifteen or twenty feet. . . . And on the right of the same face of the inclosure, the corner is apparently thrown out in the form of a small bastion. The ditch is generally two feet deep, though in many places scarcely perceptible. The whole site is over-

[1] Purchas, "Pilgrimes," iv., 1653, 1812, 1813; *cf.* also "The Pilgrimage," iii., 828.

[2] Strachey, "History of Travaile into Virginia Britannia," 41.

grown with pine, live-oak, vines, and a variety of other plants, high and low. A flourishing live-oak, draped with vines, stands sentinel near the centre. A fragment or two of stone or brick may be discovered in the grass, and then all is told of the existing relics of the city of Raleigh." The site is now owned by Walter Dough, who resides within a short distance of the historic spot. During the war, Mr. Chauncy Meekins dug up a hatchet on the site of the fort. It is hand-made, shows signs of much use, and is supposed to have been the property of the settlers. It is now in the possession of William J. Griffin, Esq., of Elizabeth City, N. C. For the following outline of the fort, I am indebted



to Prof. Eben Alexander, of the University of North Carolina, who made it during a visit in 1889. The outlines are not entirely complete, but the work was so well done that they can still be traced and will yet last for many years. The fort was a bastioned one and was about forty-five yards diagonally across.

Such was the unfortunate end of the efforts of Sir Walter Ralegh to found a new empire in the western world. His patent had cost him £40,000, and had not paid him a shilling. He had met with misfortunes and discouragements. The value of his work was unappreciated, and the Queen, to whose realm he had sought to add a new empire, declined

to contribute to the "education" of its colonies. January 7, 1587, Ralegh executed an instrument by which others were allowed to enjoy the privileges granted him under his patent; he thus provided the colonists of 1587 with a charter of incorporation for their settlement. On March 7, 1589, an indenture was executed between Sir Walter Ralegh, "Chief Governor of Virginia," on the one part, and nineteen men, "merchants of London and adventurers to Virginia," and ten others who are described as "late of London, gentlemen," on the other part. Ralegh transferred the colony of Virginia and the planting thereof in his domain to these parties. He gave them £100 toward planting the Christian religion there, and bound himself, "as much as in him lieth, to procure and indevor to obtain the Queen's letters patent for ratification, approbation and more sure confirmation of the items of this indenture." He reserved to himself only the fifth of all gold and silver ore. One of the nineteen was Richard Hakluyt, the historian, and this indenture, remarks Mr. Bancroft, is "the connecting link between the first efforts of England in North Carolina and the final colonization of Virginia," for of the nineteen "merchants of London," no less than ten are found among the subscribers to the Jamestown colony fund. But after thus disposing of his interests, Ralegh's enthusiasm for western planting was not abated. He expected to see it a flourishing colony, he said; before his death Jamestown had been founded and the corner-stone of the American nation had been laid. In the matter of colonization the fairest hopes of Ralegh ended in sadness and disappointment; but his failure even gained him immortality, and to-day the capital city of the fair commonwealth that is proud to have been the scene of his labors bears the honored name of Ralegh.

THE FATE OF THE COLONY OF 1587.

The disappearance of the settlers of 1587 has been called the tragedy of American colonization. The greatest interest was manifested in their fate by all the early explorers.

Numerous expeditions were sent in search of them. These brought back various rumors, but nothing certain could be learned. Their history became interwoven with legend and romance; but after a lapse of three hundred years they emerge again from the darkness and dust of oblivion.

It is now believed that the colonists of 1587 removed to Croatan soon after the return of Governor White to England; that they intermarried with the Croatan or Hatteras Indians; that their wanderings westward can be definitely traced, and that their descendants can be identified to-day.

It is to a discussion of the movements of the colonists after the departure of White, and to the identification of their descendants, that the remaining pages of this paper will be directed.

There can be no doubt that the colonists removed to Croatan. When White left them, "they were prepared to remove from Roanoak fifty miles into the main." He agreed with them that they should carve in some conspicuous place the name of the section to which they went, and if they went in distress a sign of the cross was to be carved above. The name Croatan was found, but there was no sign of distress. The colonists must have gone on the invitation of Manteo and his friends, and the fact that their chests and other heavy articles were buried, indicates that it was their intention to revisit the island of Roanoke at some future time, and that it was then in the possession of hostile savages. These articles consisted largely of arms and other instruments of war. This indicates that they went into the land of friends and that their new home was not far distant, otherwise they would have taken all their property with them rather than endure the fatigue of a second long journey to Roanoke for it. The question arises then, where was Croatan? On the location of this place the future of the colony depended. Croatan, or more properly Croatoan, is an Indian word, and was applied by the Hatteras Indians to the place of their residence. Here Manteo was born, and here his relatives were living when he first met the English; the latter soon began to apply the

name to the Indians themselves. The island of Roanoke was not at that time regularly inhabited, but was used as a hunting ground by the tribe to which Manteo belonged, and also by their enemies who lived on the main and were the subjects of Wingina. The name Croatan first appears in the account of Grenville's voyage of 1585. It is there made an island; Lane says that it was an island; and White also bears witness to this, for he says, when describing his discovery of the deserted and dismantled fort: "I greatly joyed that I had found a certain token of their safe being at Croatoan, which is the place where Manteo was born and the savages of the island our friends." On White's map of the coast it is put down as an island. From these facts it is perfectly clear that the adventurers believed Croatan to be an island. The map of 1666 and the Nuremburg map make it a part of the banks lying between Cape Hatteras and Cape Lookout, perhaps what is now known as Core Banks, and consequently an island; but later maps have located Croatan on the mainland, just opposite Roanoke Island, in the present counties of Dare, Tyrrell, and Hyde. It is marked thus on Ogilby's map, published by the Lords Proprietors in 1671, on Morden's map of 1687, and on Lawson's map, published in 1709. A part of this region is still known as Croatan, while the sound between this section and Roanoke Island bears the name of Croatan. On the Nuremburg map and on the map of 1666 this peninsula is called Dasamonguepeuk. Now we know that in 1587 Manteo was baptized as Lord of Roanoke and Dasamonguepeuk. This title clearly indicates that the Hatteras tribe, to which Manteo belonged, laid claims to the peninsula. They doubtless made use of it for the cultivation of corn, as well as for hunting and fishing, while their principal seat was some eighty miles to the south on the island of Croatan. The English colonists have left us unimpeachable testimony that they removed from Roanoke Island to Croatan. The Croatan of the early explorers and maps was a long, narrow, storm-beaten sandbank, incapable in itself of supporting savage life, much less the lives of men and women living in

the agricultural stage. It is not reasonable to suppose that the colonists would have gone from a fertile soil to a sterile one. It is probable then, that, in accordance with an understanding between each other, the Hatteras Indians having abandoned their residence on Croatan Island, and the English colonists having given up their settlements on Roanoke Island, both settled on the fertile peninsula of Dasamonguepeuk, which the Hatteras tribe had already claimed and partly occupied, but which they had not been able to defend against enemies. The name of their former place of residence followed the tribe, was applied to their new home, and thus got into the later maps. If this theory is accepted, it is easy to see how the Hatteras tribe may have come into communication with kindred tribes on the Chowan and Roanoke rivers, to which they seem to have gone at a later period. This is one end of the chain of evidence in this history of survivals.

The other end of the chain is to be found in a tribe of Indians now living in Robeson county and the adjacent sections of North Carolina, and recognized officially by the State in 1885 as Croatan Indians. These Indians are believed to be the lineal descendants of the colonists left by John White on Roanoke Island in 1587. The migrations of the Croatan tribe from former homes farther to the east can be traced by their traditions. It is pretty clear that the tribe removed to their present home from former settlements on Black River, in Sampson county. The time of their removal is uncertain; but all traditions point to a time anterior to the Tuscarora war in 1711, and it is probable that they were fixed in their present homes as early as 1650.[1] During the eighteenth century they occupied the country as far west as the Pee Dee, but their principal seats were on Lumber river, in Robeson county, and extended along it for twenty miles. They held their lands in common, and titles became known only on the approach of white men. The first known grant made to any member of this tribe is located on the Lowrie Swamp east of Lumber

[1] McMillan, "Sir Walter Raleigh's Lost Colony," p. 20.

river, and was made by George II. in 1732 to Henry Berry and James Lowrie.[1] Another grant was made to James Lowrie in 1738. Traditions point to still older deeds that are not known to now exist. The tribe has never ceased to be migratory in their disposition. For many years after the main body had settled in Robeson, scattered detachments would join them from their old homes farther to the east, while parts would remove farther toward the west. They are now to be found all over western North Carolina, and many families there, who have retained their purity of blood to such a degree that they cannot be distinguished from white people, are claimed by the tribe in Robeson. After the coming of the white people a part of the tribe removed to the region of the Great Lakes, and their descendants are still living in Canada, west of Lake Ontario. At a later period another company went to the northwest and became incorporated with a tribe near Lake Michigan. Some time before the war a party drifted to Ohio; one of them, Lewis Sheridan Leary, was in John Brown's party when he raided Harper's Ferry in 1859, and was killed there, October 17, 1859, while guarding John Brown's "fort." Within the present year (1890) a party has removed to Kansas.

The Croatans fought under Colonel Barnwell against the Tuscaroras in 1711, and the tribe of to-day speak with pride of the stand taken by their ancestors under "Bonnul" for the cause of the whites.[2] In this war they took some of the Mattamuskeet Indians prisoners and made them slaves. Many of the Croatans were in the continental army; in the war of 1812 a company was mustered into the army of the United States, and members of the tribe received pensions

[1] *Ibid.*, p. 14. The deeds for these grants are still extant and are in the possession of Hon. D. P. McEachin, of Robeson county, North Carolina.

[2] The traditions of the tribe that they fought in the Tuscarora war are verified by the "Colonial Records of North Carolina." In vol. ii., p. 129, we find an entry: "Whereas, report has been made to this board that the Hatteress Indyans have lately made their escape from the enemy Indyans," *i.e.*, Tuscaroras. Again, on p. 171, we find: "Upon petition of the Hatterass Indyans praying some small relief from the country for their services," etc.

for these services within the memory of the present generation; they also fought in the armies of the Confederate States. Politically they have had little chance for development. From 1783 to 1835 they had the right to vote, performed military duties, encouraged schools, and built churches; but by the constitutional convention of 1835 the franchise was denied to all "free persons of color," and to effect a political purpose it was contended by both parties that the Croatans came under this category. The convention of 1868 removed this ban, but as they had long been classed as mulattoes they were obliged to patronize the negro schools. This they refused to do as a rule, preferring that their children should grow up in ignorance, for they hold the negro in utmost contempt,[1] and no greater insult can be given a Croatan than to call him "a nigger."

Finally, in 1885, through the efforts of Mr. Hamilton McMillan, who has lived near them and knows their history, justice long delayed was granted them by the General Assembly of North Carolina. They were officially recognized as Croatan Indians; separate schools were provided for them and intermarriage with negroes was forbidden. Since this action on the part of the State they have become better citizens.[2]

They are almost universally land-owners, no two families occupying the same house, but each having its own establishment. They hold about sixty thousand acres in Robeson county. They are industrious and frugal, and anxious to improve their condition.

They are found of all colors from black to white, and in

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[1] McMillan, "Sir Walter Raleigh's Lost Colony," 14–16.

[2] It has been suggested that the name "Croatan" was invented to strengthen the theory of their origin as here presented, but this is not the case. As we have seen, Croatan was the name of a locality and not of a tribe. The tribal name was Hattoras or Hatorask, or, as we now spell it, Hatteras. Lawson calls the Indians by this name. Dr. Hawks remarks on the error of the explorers in calling them Croatans; and when the act of the North Carolina Assembly recognizing them as Croatans was read to them, an intelligent Indian remarked that he had always heard that they were called "Hattoras" Indians. —McMillan, p. 20.

some cases cannot be distinguished from white people. They have the prominent cheek-bones, the steel-gray eyes, the straight black hair of the Indian.[1] Those showing the Indian features most prominently have no beards; those in whom the white element predominates have beards. Their women are frequently beautiful; their movements are graceful, their dresses becoming, and their figures superb.

In religious inclinations they are Methodists and Baptists, and own sixteen churches. The State has provided them a normal school for the training of teachers, and this action will go very far toward their mental and moral elevation. Their school-houses have been built entirely by private means; they are all frame buildings, and are provided far better than those for the negro race. Their school enrollment in Robeson county is four hundred and twenty-two, according to the report of the eleventh census, and they employ eighteen teachers. Their entire school population, from six to twenty-one years, will probably amount to eleven hundred. Their whole population in this county is about twenty-five hundred, and their connections in other counties will perhaps swell this number to five thousand. Naturally they are quick-witted, and are capable of great expansion. Mr. John S. Leary, a prominent politician of Raleigh, and Professor of Law in Shaw University, is a member of the tribe, and one of their number has already reached the Senate of the United States, for Hon. Hiram R. Revels, who was born in Fayetteville, North Carolina, in 1822, and was senator from Mississippi in 1870–71, is not a negro, but a Croatan Indian.[2]

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[1] A recent traveller among the Croatans writes of one of them: "Where in my life had I seen a handsomer man? The face was pure Greek in profile; the eyes *steel blue*, the figure of perfect mould, and the man as easily graceful in his attitude as any gentleman in a drawing-room. I sat in my buggy talking with this man for an hour, finding him far above ordinary intelligence and full of information." That night the traveller learned that the handsome Croatan was a brother of the famous Henry Berry Lowrie.

[2] At one time the Croatans were known as "Redbones," and there is a street in Fayetteville so called because some of them once lived on it. They are known by this name in Sumpter County, S. C., where they are quiet and peace-

This is the other end of the chain. To connect the two parts and show that the Croatan Indians of to-day are the descendants of the Hatteras Indians of 1587 and of the English colony left on Roanoke Island by John White in that year, we must examine, first, the evidence of historians and explorers on the subject; and second, the traditions. character, and disposition, language, and family names of the Croatan Indians themselves.

We hear no more of the colonists left on Roanoke Island from the departure of White in 1591 until the settlement at Jamestown. We then have four sources of information in regard to them. The first of these is John Smith's "True Relation," first published in 1608. The second is a rude map of the coast of Virginia and North Carolina, which had probably been sent to England by Capt. Francis Nelson in June, 1608. It was intended to illustrate Smith's "True Relation," was not drawn from surveys, nor is it based on any accurate knowledge of the coast, nor had the maker seen the map of the coast made by John White. It was drawn presumably to illustrate a story told by the Indians, and

able, and have a church of their own. They are proud and high-spirited, and caste is very strong among them.

There is in Hancock county, Tennessee, a tribe of people known by the local name of Malungeons or Melungeons. Some say they are a branch of the Croatan tribe, others that they are of Portuguese stock. They differ radically, however, in manners and customs from the accounts which we have received of the Croatans, *cf.* four articles in *The Arena* for the current year, by Miss Will Allen Domgoole on "The Malungeons, a Forgotten People," "The Malungeon Family Tree," "The Disfranchisement of the Malungeons," and "Malungeon Music."

Mr. McMillan favors the view that they are a part of the colony of Roanoke, and on this question Mr. John M. Bishop, a native of east Tennessee, now living in Washington, writes to the author: "My theory is that they are a part of the lost colony of Roanoke. Your utterances at the recent meeting in this city on the subject of the Lost Colony of Roanoke [meeting of Amer. Hist. Ass'n., Dec. 31, 1890] were so nearly in line with my ideas in this matter that I now write to call your attention to the subject. . . . You will mark the fact that the Malungeons are located on Newman's Ridge and Black Water creek in Hancock county, Tenn., directly in the path of ancient westward emigration. Dan Boone tramped all over this immediate section. . . . The Malungeons, drifting with the tide of early emigration, stranded on the borderland of the wilderness and remained there."

based on the information derived from them. It was sent in September, 1608, by Zuñiga, the Spanish Minister in London, to his master, Philip III., and is now first published in Mr. Alexander Brown's "Genesis of the United States." The third source is a pamphlet called "A True and Sincere Discourse of the Purpose and Ende of the *Plantation* begun in *Virginia*," published in 1610. The fourth is Strachey's "History of Travaile into Virginia Britannia," published by the Hakluyt Society in 1849. Strachey came to Virginia as early as 1610, and became secretary of the council. His history is put by Mr. R. H. Major, his editor, between 1612 and 1616.

Captain Smith says in his "True Relation" that Opechancanough, one of the Indian kings, informed him "of certaine men cloathed at a place called Ocanahonan, cloathed like me." "The people cloathed at Ocamahowan, he also confirmed." Again: "We had agreed with the king of Paspahegh to conduct two of our men to a place called Panawicke, beyond Roonok, where he reported many men to be apparelled."[1]

The map illustrating this "Relation" shows three rivers which are probably intended to represent the Roanoke, the Tar, and the Neuse. On the south side of the Roanoke is a place called Ocanahowan. On the upper waters of the Neuse is Pakrakanick, and near it the legend "Here remayneth 4 men clothed that came from Roonock to Ochanahowan." The peninsula known to the explorers of 1585 as Dasamonguepeuk is called Pananiock, and the legend placed there says: "Here the king of Paspahege reported our men to be & wants to go." At a point on James river the map says: "Here Paspehege and 2 of our men landed to go to Panaweock." This expedition set out in January or February, 1608, and failed because the Indian king played the villain.

The managers of the Virginia Company in their "True and Sincere Declaration," referring to the Roanoke colony, say: "if with these [evils] we compare the advantages which we

[1] Smith's "Works," Arber's edition, 1884, pp. 17–23.

have gotten . . . in the *intelligence* of some of our nation planted by *Sir Walter Raleigh*, yet a live, within fifty mile of our fort, who can open the womb and bowels of this country; as is testified by two of our colony sent out to seek them, who, (though denied by the savages speech with them) found *crosses* and *Letters* the *Characters* and assured Testimonies of *Christians* newly cut in the barks of trees." [1]

Strachey says: "At Peccarecamek and Ochanahoen . . . the people have houses built with stone walls, and one story above another, so taught them by those English who escaped the slaughter at Roanoak, at what time this our colony, under the conduct of Captain Newport, landed within the Chesapeake Bay." Powhatan had been instigated to this massacre by his priests. Seven persons escaped, four men, two boys, and a young maid. These fled up the Chowan river and were preserved at Ritanoe by a chief named Eyanoco, and, in return for protection, began to teach the savages the arts of civilized life.[2]

We are to remember always that the reports of Indians are vague and indefinite. This is to be expected of an uneducated people, but while varying in detail the substance may be depended on as essentially true. The vagueness in these cases is further increased by the fact that the English knew little from actual exploration of the regions involved. We are safe then in identifying: (1) Smith's Panawicke with the Pananiock and the Panaweock of the map. This is the name given to the territory known to the earlier explorers as Dasamonguepeuk. (2) The Ochanahonan and Ocamahowan of Smith and the Ocanahowan of the map are identical with Strachey's Ochanahoen. (3) The Pakrakanick of the map is identical with Strachey's Peccarecamek.

Taking these sources of information together and identifying the localities as we have done it seems

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[1] Brown, "Genesis of the United States, i., 348.

[2] Strachey, pp. 50, 185. The expression used by Strachey with reference to the colony on page 152, where he says it will be related "in due place in this decade," indicates that he had some additional information in regard to their fate, but it was not given.

reasonable to conclude: (1) That about 1607 the colonists left on Roanoke Island in 1587, now intermixed with the Croatan Indians, were on the peninsula of Dasamonguepeuk, and that fresh traces of them were seen about this time by explorers sent out from Jamestown. (2) That they heard of the arrival of Captain Newport in Chesapeake Bay, and that some of them made an effort to reach the colony at Jamestown. It is not necessary to suppose that there was a general migration of the whole Croatan tribe toward the Chowan. We may conclude that most of the original colonists who were then alive and some of the half-breeds undertook the journey. They were met with hostility by the emissaries of Powhatan and some were slain.[1] (3) That others were protected and saved by a chief named Eyanoco, who was probably connected in some way with the Croatan tribe, for we must remember that when Lane was exploring these regions in 1586 he found Indians whose language Manteo could understand without an interpreter. (4) That according to the map they travelled from the region of the Chowan and Roanoke rivers to the country known on it as Pakrakanick and to Strachey as Peccarecamek. This was probably on the upper waters of the Neuse, in what may now be Wayne and Lenoir counties. It is probable that they were rejoined by those who had not undertaken the expedition toward Virginia, and from this point they could have passed easily into Sampson and Robeson counties in conformity with their traditions as related by Mr. McMillan.

Smith's "Relation," the map, and Strachey, all tend to strengthen and explain the testimony of the next historical reference we have to the tribe. This is by John Lederer, a German, who made some explorations in eastern North

[1] Purchas says Powhatan confessed to Smith that he had been present at the slaughter of the English. But this account did not seem satisfactory to Smith, for he says in his condensation of White's narrative for his "General History of Virginia": "And thus we left seeking our colony, that was never any of them found or seen to this day, 1622." This shows that Strachey's account was not known in 1609, when Smith had given up the search and returned to England.—Arber's edition of Smith's "Works" 1884, p. 331.

Carolina, perhaps in the region south of the Roanoke river in 1669–70. He mentions a powerful nation of bearded men two and one-half days' journey to the southwest, "which I suppose to be the Spaniards, because the Indians never have any" [beards].[1] Dr. Hawks thinks that these "bearded men" may have been the settlers on the Cape Fear, but we know that this colony was disbanded in 1667. We have no records of any Spanish settlements as far north as this; and according to Mr. Hamilton McMillan, whom we have already quoted, the mongrel tribe now known as Croatan Indians was occupying its present home as early as 1650.[2] The statement of Lederer can only refer to the Croatan tribe.

The next account we have of them is in 1704, when Rev. John Blair, then travelling as a missionary through the Albemarle settlements, tells of a powerful tribe of Indians living to the south of what is now Albemarle Sound, "computed to be no less than 100,000, many of which live amongst the English, and all, as I can understand, a very civilized people."[3] This account is very vague and indefinite, and the numbers are largely overestimated; but it can refer to no other tribe than the Croatans. They were then living southwest of Pamlico Sound and they alone had had civilized influences to bear upon them.

The next reference to the tribe is more definite. John Lawson, the first historian of North Carolina, explored all the region southwest of Pamlico Sound. He was thoroughly acquainted with the Indians in those sections. In writing of the Roanoke settlements he says: "A farther confirmation of this [the settlements of Ralegh] we have from the Hatteras [Croatan] Indians, who lived on Ronoack island, or much frequented it. These tell us that several of their ancestors were white people and could talk in a book as we do; the truth of which is confirmed by gray eyes being frequently found amongst these Indians and no others.

[1] Hawks, "History of North Carolina," ii., 50.
[2] McMillan, "Sir Walter Raleigh's Lost Colony," p. 20.
[3] "Colonial Records of North Carolina," i., 603.

They value themselves extremely for their affinity to the English, and are ready to do them all friendly offices. It is probable that this settlement miscarried for want of timely supplies from England; or through the treachery of the natives, for we may reasonably suppose that the English were forced to cohabit with them for relief and conservation; and that in process of time they conformed themselves to the manners of their Indian relations; and thus we see how apt human nature is to degenerate."[1] Lawson wrote these words not later than 1709, as his book was first published in that year. It is impossible for the story told by him to be a tradition not founded on the truth, for he wrote within one hundred and twenty years of the original settlements at Roanoke, and he may have talked with men whose grandfathers had been among the original colonists.

The next witnesses in this chain of evidence are the early settlers in the Cape Fear section of North Carolina. Scotch settlements were made in Fayetteville as early as 1715.[2] In 1730 Scotchmen began to arrive in what is now Richmond county, and French Huguenots were at the same time pressing up from South Carolina. The universal tradition among the descendants of these settlers is that their ancestors found a large tribe of Indians located on Lumber river in Robeson county, who were tilling the soil, owning slaves, and speaking English. The descendants of *this* tribe are known to be the Croatan Indians of to-day.

We see, then, that the historical arguments which tend to identify the Croatans of to-day as the descendants of the colonists of 1587 possess an historical continuity from 1591 to the present time. There is also a threefold internal argument based: (1) on the traditions of the Croatan Indians of to-day; (2) on their character and disposition; (3) on their spoken language and family names.

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[1] Lawson, "The History of Carolina," (ed. 1860), pp. 108, 109.

[2] A house pulled down on Person Street, Fayetteville, in 1889, fixes this date. This places the first settlements in this section at an earlier date than has been assigned them hitherto. (H. McMillan, in a letter to the writer.)

I. *Traditions.* The Croatan Indians believe themselves to be the descendants of the colonists of 1587, and boast of their mixed English and Indian blood. They always refer to eastern North Carolina as Virginia, and say their former home was in Roanoke in Virginia, which means the present counties of Dare, Tyrrell, Hyde, Craven, Carteret, and Jones, and of this residence their traditions are sufficiently clear. They say that they held communication with the east long after their removal toward the west, and one of these parties may have met Lawson about 1709. They know that one of their leaders was made lord of Roanoke and went to England, but his name has been lost, the nearest approach to it being in the forms Maino and Mainor. They have a word "mayno," which means a very quiet, law-abiding people; and this, by a kind of metonomy, may be a survival of Manteo. When an old chronicler was told the story of Virginia Dare he recognized it, but her name is preserved only as Darr, Durr, Dorr. They say that, according to their traditions, Mattamuskeet Lake in Hyde county is a burnt lake, and so it is; but they have no traditions in regard to Roanoke river. They say, also, that some of the earlier settlers intermarried with them, and this may explain the presence of such names among them as Chavis (Cheves), Goins (D'Guin), Leary (O'Leary).

II. *Character and Disposition.* These Indians are hospitable to strangers and are ever ready to do a favor for the white people. They show a fondness for gay colors, march in Indian file, live retired from highways, never forget a kindness, an injury, nor a debt. They are the best of friends and the most dangerous of enemies. They are reticent until their confidence is gained, and when aroused are perfect devils, exhibiting all the hatred, malice, cunning, and endurance of their Indian ancestors.[1] At the same time they

[1] A fearful illustration of this spirit was shown in the career of Henry Berry Lowrie, "the great North Carolina bandit." In February, 1864, the Home Guard of Robeson county found Allen and William Lowrie, the father and brother of Henry Berry, guilty of receiving stolen goods, tried them by court-martial, and executed them under military law. The execution awakened the

are remarkably cleanly in their habits, a characteristic not found in the pure-blooded Indian. Physicians who practise among them say that they never hesitate to sleep or eat in the house of a Croatan. They are also great road-builders, something unknown to the savage. They have some of the best roads in the State, and by this means connect their more distant settlements with those on Lumber river. One of these, the Lowrie road, has been open for more than a hundred years and is still in use. It extends southwest from Fayetteville, through Cumberland and Robeson counties, to a settlement on the Pee Dee. It was over this road that a special courier bore to General Jackson in 1815 the news of the treaty of Ghent.

III. *Language and Family Names.* The speech of the

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desire for revenge in the remaining brothers, and under the leadership of Henry Berry Lowrie they defied for ten years the authority of the county, the State, the Confederacy, and the United States. They killed the best men in the section, some for plunder, some for revenge, and some in self-defence. Henry Berry Lowrie was twenty-six at the time of his death, and in physique was a perfect Apollo. His countenance expressed the highest degree of firmness, courage, and decision of character. His forehead was high, broad, and massive; his eyes were a grayish hazel, his hair was straight and black, his chest was deep and broad; he was five feet, ten inches high, weighed one hundred and fifty pounds, and was as elastic as rubber. He was always completely armed; in a belt he carried five long-range six-shooters; a Henry rifle carrying sixteen cartridges was suspended at his back; a long knife and a double-barrelled shotgun were found in his hands. His armament weighed not less than eighty pounds, but with it he could run, swim, bear weeks of exposure in the swamps, and travel by day and by night to an extent which would have killed a white man or negro. He slept on his arms, never seemed tired, and was never taken by surprise. During his long career of outlawry he was never untrue to a promise, never committed arson, nor insulted a white woman. A reward of ten thousand dollars was placed on his head; he was hunted by night and by day, but eluded all his pursuers, and perished on Feb. 20, 1872, from the accidental discharge of his gun. After the death of the chief the band lost much of the terror of its name, and two years later the last outlaw was slain. (*Cf.* "The Lowrie History, as Acted in Part by Henry Berry Lowrie, the Great North Carolina Bandit, with Biographical Sketches of his Associates," by Mrs. Mary C. Norment, Wilmington, 1875. This book was written by Joseph B. McCallum; the chapter on the genealogy of the tribe is "notoriously unreliable"; it makes them all descendants of James Lowrie, who came to Robeson county from Virginia in 1769.)

Croatans is very pure English; no classical terms are used. It differs from that of the whites and from that of the blacks among whom they live. They have preserved many forms in good use three hundred years ago, but which are now obsolete in the written language and are found only in colloquial and dialectical English. They drawl the penult or final syllable in every sentence. They begin their salutations with "mon-n-n," *i. e.*, man. Their traditions usually begin: "Mon, my fayther told me that his fayther told him," etc. They retain the parasitic (glide) *y*, which was an extremely common development in Anglo-Saxon, in certain words, through the palatal influence of the previous consonant, pronouncing cow as c*y*ow, cart as c*y*art, card as c*y*ard, girl as g*y*irl, kind as k*y*ind. The voiceless form *wh*ing is retained instead of the voiced *w*ing. They have but two sounds for *a*, the short a being changed into o before nasals and representing Anglo-Saxon open o (o) in mon. They use the northern lov*and* in place of the later hybrid loving. The Irish *fay-ther* is found for father. The dialectical *Jeams* is found in place of James. They regularly use *mon* for man; *mension* for measurement; *aks* for ask; *hii* for it; *hosen* for hose; *housen* for houses: *crone* is to push down; and *knowledge* is wit.

The strongest evidence of all is furnished us by the family names of the Croatan Indians of to-day. John White, in his account of the settlement of 1587, has left us "the names of all the men, women, and children which safely arrived in Virginia and remained to inhabit there." These settlers were one hundred and seventeen in number, and had ninety-five different surnames; out of these surnames forty-one, or more than forty-three per cent., including such names as Dare, Cooper, Stevens, Sampson, Harvie, Howe, Cage, Willes, Gramme, Viccars, Berry, Chapman, Lasie, and Cheven, which are now rarely met with in North Carolina, are reproduced by a tribe living hundreds of miles from Roanoke Island, and after a lapse of three hundred years.[1]

[1] Dr. Hawks reprints ("History of North Carolina," i., 211), from Hakluyt this list of names. Mr. McMillan has compared it with the names of the

The chroniclers of the tribe say that the Dares, the Coopers, the Harvies, and others, retained their purity of blood, and were generally the pioneers in emigration. And still more remarkable evidence is furnished us by the fact that the traditions of every family bearing the name of one of the lost colonists point to Roanoke Island as the home of their ancestors.

TO SUMMARIZE: Smith and Strachey heard that the colonists of 1587 were still alive about 1607. They were then living on the peninsula of Dasamonguepeuk, whence they travelled toward the region of the Chowan and Roanoke rivers. From this point they travelled toward the southwest, and settled on the upper waters of the Neuse. John Lederer heard of them in this direction in 1670 and remarked on their beards, which were never worn by full-blooded Indians. Rev. John Blair heard of them in 1704. John Lawson met some of the Croatan Indians about 1709, and was told that their ancestors were white men. White

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Croatans, and, according to his authority, those written below in italics are now found among the Croatans:

MEN.

John White,	Thomas Topan,	Richard Wildye,
Roger *Baily*,	*Henry Berry*,	Lewes Wotton,
Ananias *Dare*,	Richard *Berry*,	Michael Bishop,
Christopher *Cooper*,	John Spendlove,	Henry *Browne*,
Thomas *Stevens*,	John Hemmington,	Henry Rufoote,
John Sampson,	Thomas *Butler*,	Richard Tomkins,
Dionys. *Harvie*,	Edward Powell,	Henry Dorrel,
Roger Prat,	John Burdon,	Charles Florrie,
George *Howe*,	James Hynde,	Henry Mylton,
Simon Fernando,	Thomas Ellis,	Henry *Paine*,
Nicholas *Johnson*,	William *Browne*,	Thomas *Harris*,
Thomas Warner,	Michael Myllet,	William Nichols,
Anthony *Cage*,	Thomas *Smith*,	Thomas Phevens,
John *Jones*,	Richard Kemme,	John Borden,
William *Willes*,	Thomas *Harris*,	Thomas *Scot*,
John *Brooke*,	Richard Taverner,	Peter *Little*,
Cutbert *White*,	John Earnest,	John Wyles,
John Bright,	Henry *Johnson*,	Bryan Wyles,
Clement *Taylor*,	John Starte,	George *Martyn*,
William Sole,	Richard Darige,	Hugh *Pattenson*,
John Cotsmur,	William *Lucas*,	Martin Sutton,

settlers came into the middle section of North Carolina as early as 1715, and found the ancestors of the present tribe of Croatan Indians tilling the soil, holding slaves, and speaking English. The Croatans of to-day claim descent from the lost colony. Their habits, disposition, and mental characteristics show traces both of savage and civilized ancestry. Their language is the English of three hundred years ago, and their names are in many cases the same as those borne by the original colonists. No other theory of their origin has been advanced, and it is confidently believed that the one here proposed is logically and historically the best, supported as it is both by external and internal evidence. If this theory is rejected, then the critic must explain in some other way the origin of a people which, after the lapse of three hundred years, show the characteristics, speak the language, and possess the family names of the second English colony planted in the western world.

Humphrey Newton,	Arnold Archard,	John Farre,
Thomas *Colman*,	John *Wright*,	John *Bridger*,
Thomas *Gramme*,	William Dutton,	Griffin *Jones*,
Mark *Bennett*,	Maurice *Allen*,	Richard Shabedge,
John Gibbes,	William Waters,	James *Lasie*,
John Stilman,	Richard Arthur,	John *Cheven*,
Robert *Wilkinson*,	John *Chapman*,	Thomas Hewet,
John Tydway,	William Clement,	William Berde.
Ambrose *Viccars*,	Robert *Little*,	
Edmund English,	Hugh *Tayler*,	

WOMEN.

Eleanor *Dare*,	Elizabeth Glane,	Margaret Lawrence,
Margery *Harvie*,	Jane *Pierce*,	Joan Warren,
Agnes *Wood*,	Audry Tappan,	Jane Mannering,
Winnifred *Powell*,	Alice *Chapman*,	Rose *Payne*
Joyce Archard,	Emma Merimoth,	*Elizabeth Viccars.*
Jane *Jones*,	—— Colman,	

BOYS AND CHILDREN.

John Sampson,	Thomas Archard,	*George Howe*,
Robert Ellis,	Thomas Humfrey,	John Prat,
Ambrose *Viccars*,	Thomas Smart,	William Wythers.

CHILDREN BORN IN VIRGINIA.

Virginia *Dare*, —— *Harvie.*

SOURCES OF INFORMATION ON RALEGH'S SETTLEMENTS ON ROANOKE ISLAND.

Richard Hakluyt (1553–1616), in the edition of his "Voyages," published 1598–1600, prints nearly all the original material on the history of the first attempts of the English to fix settlements in America. He prints:

(1) "The Letters Patents Granted by the Queen's Majesty to M. Walter Ralegh," 1584 (iii., p. 243, *seq.*).

(2) "The First Voyage Made to the Coasts of America by M. Philip Amadas and M. Arthur Barlowe," 1584 (iii., 246). This narrative, as the context shows, was the work of Barlowe.

(3) "The Voyage Made by Sir Richard Greenville for Sir Walter Ralegh to Virginia," 1584 (iii., 251).

(4) "An Account of the Particularities of the Employments of the Englishmen Left in Virginia by Richard Granville under the Charge of Master Ralph Lane, General of the Same" (iii., 255).

(5) "The Third Voyage Made by a Ship Sent in the Year 1586 to the Relief of the Colony Planted in Virginia" (iii., 265).

(6) "A Brief and True Report of the new Found Land of Virginia: by Thomas Hariot" (iii., 266). This edition of the "Brief and True Report" is abridged.

(7) "The Fourth Voyage Made to Virginia, with Three Ships in 1587, wherein was Transported the Second Colony" (iii., 280).

(8) "The Fifth Voyage of M. John White, into the West Indies, and Parts of America Called Virginia" 1590 (1591) (iii., 288).

A new edition of Hakluyt was published in London, 1809–1812, 5 vols., 4to. Vols. i., ii., iii. and a part of iv. are exactly reprinted from the edition of 1598–1600. The remainder of the fourth and the whole of the fifth are occupied by reprints of various publications of Hakluyt's and others of his time. These documents will all be found in the new edition of Hakluyt just issued.

All the narratives as given by Hakluyt have been reprinted by Dr. Francis L. Hawks in the first volume of his "History of North Carolina" (Fayetteville, 1857). Dr. Hawks was one of the foremost antiquarians of his day; his thorough knowledge of the coast and territory visited by the explorers renders his annotations and notes to the text a necessity to the student. Rev. Increase N. Tarbox has gone over the same ground in his "Sir Walter Raleigh's Colony in America" (Prince Society Publications, Boston, 1884); but nothing has been added to the work of Dr. Hawks.

The charter granted to Ralegh will also be found in "Hazard's Historical Collection of State Papers" (i., 33) and in Ben: Perley Poore's "Charters and Constitutions" (ii., 1379).

In 1588 Hariot's "A briefe and true re-/port of the new found land of Virginia:" appeared in London, 4to, 23 leaves. This edition is of great rarity. There is a copy in the Lenox Library, another in the British Museum, and a third in the Bodleian, Oxford.

In 1590 De Bry published Hariot's narrative with a map and twenty-two plates from the drawings of John White, and to secure more profit had the text printed in English, Latin, French, and German, thus offering four editions to the public. This was the only part of his "Voyages" which appeared in

English. It was after the publication of this work that De Bry conceived the idea of his collections; Hariot's narrative forms the first part of his "Great Voyages." Hariot is perhaps best known from De Bry's English and Latin editions, of which the full titles are as follows:

A briefe and true report / of the new foundland of Virginia, / of the commodities and of the nature and man/ners of the naturall inhabitants. Discouered by / the English Colony there seated by Sir Richard / Greinuile Knight In the yeere 1585. Which Remained Vnder the gouernement of twelue monethes, / At the speciall charge and direction of the Honou-/rable Sir Walter Raleigh Knight, lord Warden / of the stanneries Who therein hath beene fauoured / and authorised by her Maiestie / and her letters patent: / This fore book Is made in English / By Thomas Hariot / seruantt to the abouenamed / Sir Walter, a member of the Colony, and there / imployed in discouering. / Cum Gratia et Privilegio, Cæs. Matis speciālis / *Francoforti ad moenum* / *Typis Ioannis Wecheli, sumtibus vero Theodori* / *De Bry anno* CIↃ IↃ XC / *Venales reperiuntur in officina Sigismundi Feirabendii* / [Colophon:] *At Franckfort,* / *inprited* [sic] *by Ihon We* / *chel, at Theodore de Bry, own* / *coast and chardges.* / MDXC / Folio.

The Latin version is entitled:

Admiranda narratio / Fida tamen, de Commodis et / Incolarvm Ritibvs Virginiæ, nvper / admodum ab Anglis, qvi à Dn. Richardo / Greinvile Eqvestris Ordinis Viro eò in / Coloniam Anno. M. D. LXXXV. dedvcti sunt / inventæ, Svmtvs faciente Dn. VValtero / Raleigh Eqvestris Ordinis Viro Fodinarvm / stanni præfecto ex Avctoritate / Serenissimæ Reginæ Angliæ. / Anglico scripta Sermone / à Thoma Hariot, eivsdem Walteri Domesti-/co, in eam Coloniam misso vt Regionis si-/tvm diligenter observaret / Nunc avtem primvm Latio donata à / C. C. A. / Cvm Gratia et Privilegio Cæs. Matis speci / ad Qvadriennivm / *Francoforti*, &c., as above.

De Bry's English "Hariot" was reprinted in 1871 by the photo-lithographic process (New York, folio).

De Bry also published in Latin an account of the expedition of Grenville as furnished him by Lane and Hariot in his "Perigrinationes in Americam," part i. (Frankfort, 1590). The same publication contains White's "Portraits to the Life and Manners of the Inhabitants," which was republished in New York in 1841.

Four letters of Ralph Lane sent home from Virginia, and not to be found in Hakluyt, have been reprinted in "Archæologia Americana," vol. iv. (Worcester, 1860), and edited by Rev. Edward E. Hale, who also contributes a very unappreciative biography of Lane to the same volume. Mr. Stephen B. Weeks printed in the *North Carolina University Magazine* (ix., 225; Chapel Hill, N. C., 1890) sketches of Ralph Lane and John White based on the sketch of Lane by Mr. Hale and on the original reports of the explorers.

Some original material may also be found in "A Summarie and True Discourse of Sir Francis Drake's West Indian Voyage," London, 1589; which is also in Hakluyt, 1598–1600. The subject is treated very briefly in Purchas' "Pilgrimes," vol. iv., and in his "Pilgrimage," vol. iii. Strachey's 'History of Travaile into Virginia Britannia" gives us some new hints as to the fate of the colony (London, 1849).

The English settlements on Roanoke Island have been treated in course by the historians of the United States most fully and best by Mr. Bancroft in his history (part i., ch. v., edition of 1883); by Bryant and Gay in their "History of the United States, i., ch. x., and by Hon. William Wirt Henry, in the "Narrative and Critical History of America" (iii., ch. iv.). It has its proper place in the histories of North Carolina. Of these, the work of Dr. Hawks is the best. He devotes the whole of his first volume to the colony, reprints most of the original documents, and adds a sketch of Ralegh.

The sending of colonies to America was but an incident in the life of Ralegh, and these events receive but scant attention in biographies of the distinguished cavalier. The best accounts are those by Oldys (1733) and Edward Edwards (1868).

Mr. Edward C. Bruce, in his "Loungings in the Footprints of the Pioneers" (*Harper's Magazine*, May, 1859, and May, 1860), writes of Roanoke Island as it then was. Mr. Edward Eggleston photographed and published in the *Century Magazine* for November, 1882, and May, 1883, a part of the Grenville collection of the original drawings, from which De Bry's engravings of North Carolina Indians were made. The Grenville collection is larger than the Sloane collection, which has been supposed hitherto to represent the originals of De Bry. The pieces of the Grenville collection are also immensely superior in technical quality, and Mr. Eggleston argues in *The Nation* for April 23, 1891, that the Grenville collection contains the original drawings used by De Bry, and not the Sloane collection; that they "are John White's originals, which were used with some changes by De Bry, and that the Sloane pictures are not original, but early and rather clumsy copies."

In a monograph before the Essex Institute on "An Account of the Cutting through of Hatteras Inlet, North Carolina, September 7, 1846. Also through which Inlet did the English Adventurers of 1584 enter the Sounds of North Carolina" (Salem, 1885), Mr. William L. Welch tries to identify the place of entrance and combats Bancroft's statement that they entered through Ocracoke Inlet and landed on Wocokon Island.

The first printed suggestion that the Croatan Indians of to-day are the descendants of White's colony of 1587, which has come to the notice of the writer, was in an article published by Col. Fred. A. Olds of Raleigh in the *Wilmington* (N. C.) *Messenger* for July 31, 1887; but the real author of the theory is Mr. Hamilton McMillan of Robeson county, N. C., who has lived among the Croatans for many years, and knows their history and traditions. He advanced this idea in 1885, while a member of the General Assembly of North Carolina, and it was through his influence that the tribe was recognized as such. He has since embodied his opinions in a little brochure entitled: "Sir Walter Raleigh's Lost Colony. An Historical Sketch of the Attempts of Sir Walter Raleigh to Establish a Colony in Virginia, with the Traditions of an Indian Tribe in North Carolina, Indicating the Fate of the Colony of Englishmen Left on Roanoke Island in 1587" (Wilson, N. C., 1888). Mr. McMillan advances internal evidence and tradition with historical evidence, in favor of the Survival. A summary of the present paper will be found in the *Magazine of American History* for February, 1891.

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OF THE

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VOL. V OCTOBER, 1891 PART [illegible]

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PRICE ONE DOLLAR

AMERICAN HISTORICAL ASSOCIATION,

Organized at Saratoga, N. Y., September 10, 1884.

ACT OF INCORPORATION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Andrew D. White, of Ithaca, in the State of New York; George Bancroft, of Washington, in the District of Columbia; Justin Winsor, of Cambridge, in the State of Massachusetts; William F. Poole, of Chicago, in the State of Illinois; Herbert B. Adams, of Baltimore, in the State of Maryland; Clarence W. Bowen, of Brooklyn, in the State of New York; their associates and successors, are hereby created in the District of Columbia a body corporate and politic, by the name of the American Historical Association, for the promotion of historical studies, the collection and preservation of historical manuscripts, and for kindred purposes in the interest of American history and of history in America. Said Association is authorized to hold real and personal estate in the District of Columbia so far only as may be necessary to its lawful ends to an amount not exceeding five hundred thousand dollars, to adopt a constitution, and to make by-laws not inconsistent with law. Said Association shall have its principal office at Washington, in the District of Columbia, and may hold its several meetings in such places as the said incorporators shall determine. Said Association shall report annually to the Secretary of the Smithsonian Institution concerning its proceedings and the condition of historical study in America. Said Secretary shall communicate to Congress the whole of such reports, or such portions thereof as he shall see fit. The Regents of the Smithsonian Institution are authorized to permit said Association to deposit its collections, manuscripts, books, pamphlets, and other material for history in the Smithsonian Institution or in the National Museum at their discretion, upon such conditions and under such rules as they shall prescribe.

[Approved, January 4, 1889.]

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